Opinion read by Board

23-20

Nov. 24. 1874

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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~355~~. 78

JAMES M. THOMPSON, APPELLANT,

vs.

W. B. DONALDSON, P. C. HARGUE, JAMES MORROW, ET AL., CLAIMANTS OF THE STEAMER GREAT REPUBLIC.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

FILED DECEMBER 10, 1872.

DEC. 1874

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INDEX.

	Original.	Print.
Libel	1	1
Bill	4	2
Answer	5	3
Libellant's testimony:		
A. M. Geary	11	6
J. A. Troxler	16	8
W. H. Rigeley	22	11
M. Causland	27	13
H. A. Ealer	36	17
D. Klotter	37	18
W. H. King	45	22
B. F. Littrell	51	25
H. L. Swords	56	27
J. L. Harris	59	29
Cleona's trips	41	20
Cleona's trips	44	22
Claimants' evidence:		
A. B. Davitt	30	15
E. L. Fulkerson	61	30
Wm. J. Kribben	69	33
J. McCloud	78	37
J. C. Vanhook, captain	85	41
J. L. Wilkins	94	45
A. Buchanan	96	46
Release bond	101	49
Petition to amend 2d article of libel	103	50
Hearing and submission of cause	106	50
Judgment	107	51
Rule and order—new trial granted	107	51

	Original.	Print.
Petition for a jury of ship-masters	107	51
And order granting same	108	51
Order amending order	109	51
Order appointing assessor for libellant	109	51
Order appointing assessor for claimant	110	52
Hearing and submission of cause	111	52
Opinion of assessor for claimant	111	52
Opinion of assessor for libellant	114	53
Judgment	116	54
Motion for a suspensive appeal	116	54
Appeal bond	117	54
Original plan and sketch annexed at foot of transcript		
Clerk's certificate	120	55
PROCEEDINGS IN UNITED STATES CIRCUIT COURT.		
Hearing and submission of cause	120	55
Decree	121	55
Rule for a new trial	122	55
Order new trial refused	122	56
Final decree	123	56
Motion and order for appeal	124	56
Bond for appeal	125	57
Agreement to annex to this transcript the original plan and sketch and printed copy of record	127	58
Original plan and sketch annexed	128	58
Clerk's certificate	129	58
Citation of appeal and service	130	58

1 United States District Court.

To the honorable E. H. Durell, Judge of the U. S. district court for the district of Louisiana:

The libel of James M. Thompson, a resident of Opelousas, in the State of Louisiana, and sole owner of the steamboat Cleona, whereof W'm H. King is now and has been master, against the steamboat Great Republic, whereof Van Hook is now or late was master, her tackel, apparel, machinery, and furniture, and against all persons intervening for their interest therein, in a cause of collision, civil and maritime, alleges as follows:

I. That the steamboat Cleona, belonging to libellant, whereof W'm H. King now is and then was master, being in the port of New Orleans, on Saturday the 28th of August, 1869, and bound on a voyage to Donaldsonville, on the Mississippi river, with a large number of passengers, and an assorted cargo of merchandise to be landed at various points and places on the coast between New Orleans and Donaldsonville, left this port on her said voyage at about 5 o'clock, p. m., said evening, fully manned and equipped, and with skilful pilots and officers in charge of the boat, and was at that time a tight, staunch, and well-built steamer of the burden of 118 tons, and enrolled and licensed to pursue the coasting trade.

II. That on the same evening, Saturday, August 28th, 1869, be-
2 tween the hours of 6 and 7 p. m., and while it was good light, so as to be able to distinguish small objects on either bank of the river, and when near 12 point, above this city, and libellant's steamboat was crossing from the left bank of the river to the bend on the right, and in an oblique course against the current of the river, and when about in the middle of the river the steamboat Great Republic, of the burden of about 2,200 tons and upwards, coming up behind libellant's said steamboat Cleona struck her with great force and violence on her larboard stern, carrying away her water-wheel, cylinder timber, bulk-head, cook-house, breaking all her pantry-ware, looking-glasses, bowls, and pitchers in the state-rooms; also, all her skylights, knocking a quantity of flour and other merchandise into the river, also three of the passengers and crew, two of whom were drowned; twisting the hull and cabin so as to very seriously injure the boat, and in fact rendering libellant's said boat a complete wreck, so that she had to be towed to the bank of the river, from which she was on the next day brought to the city by a tow-boat, where she had to go into dock, and has ever since been undergoing repairs in consequence of said collision.

III. That the steamer Great Republic is a very large and powerful boat, and was at the time of the said collision going up the river at the rate of about 12 miles an hour, and that libellant's boat was going at the rate of 6½ miles per hour; that the river was about half a mile wide at the place of the collision, and Carrollton distant about 4½ miles from libellant's boat, and could be seen at the time, the river being almost straight, so that the steamboat Great Republic could be seen for miles before she struck libellant's boat; and that when she had approached
3 within a short distance, and seeing that she was coming right on to the Cleona, the pilot of libellant's boat blew one whistle to call the attention of the officers of the Great Republic to libellant's boat, and prevent them from running her down; that not finding that whistle answered he blew another, and immediately afterwards, and without answer or paying any attention to said signals, the steamer Great Repub-

lic rushed into and against libellant's boat, careening her over so that a man could not stand on her deck, and the water was rushing down her main hatch, and damaging her as stated above.

IV. That at the time of said collision there was abundance of room for the steamer Great Republic to have passed on either side of the Cleona, the river being clear, wide, and entirely free from obstructions; and that the officers and crew of libellant's boat *done* everything that they possibly could to avoid the collision; but the steamer Great Republic having great speed and power libellant's boat could not possibly avoid her; and that it was, by law, the duty of the steamer Great Republic, when overtaking the Cleona, and before approaching within 800 yards, to have blown her whistle to indicate which side of the river she would take, and which she did not do, and that said collision resulted wholly from gross neglect, mismanagement, carelessness, and unskillfulness of the officers and crew of the steamer Great Republic, and without any fault on the part of libellant's boat.

V. That libellant has sustained damages by said collision in the full sum of seven thousand dollars, twenty-six hundred and eighty-three 50-100 of which are for work and materials furnished in making said repairs; and the balance is for detention and straining of her cabin,
4 which it is impossible to repair; all of which will more fully appear by reference to the bill annexed and made part hereof.

VI. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States, and of this honorable court.

Wherefore libellant prays that process in due form of law, and according to the course of this honorable court in causes of admiralty and maritime jurisdiction, may issue against the said steamboat Great Republic, her tackel, apparel, machinery, and furniture; and that all persons having, or pretending to have, any interest therein, be admonished to appear and answer the matters aforesaid; and that, after due proceedings had, that this honorable court will be pleased to decree for the claim and damages aforesaid, with 5 per cent. interest from the 15th of September, 1869, and to decree such other relief to libellant as to law and justice shall appertain, with all costs of suit.

BENTINCK EGAN.
Proctor, James M. Thompson.

Sworn to and subscribed before me this 16th Sept., 1869.
K. LOEW, *Deputy Clerk.*

9499. NEW ORLEANS, *September* 16, 1869.

Steamer Great Republic and Owners.

To Steamer Cleona, DR.

Foundry bill of D. C. McCann	$112 39
Lumber bill of Jos. A. Brown	179 31
Blacksmith work	19 25
Wages, necessary labor	546 20
Drayage	9 00
5 Anvil	25 00
Two pair trucks, at $20 each	40 00
Carpenter work and joiner work	500 00
Dockage	1,537 10
Damage to kitchen, crockery, etc	350 00
Stores lost and expended	150 00
Painting	150 00
Roofing	85 00

Glazing work	50 00
Lost freight	140 00
Towage	75 00
Damage to cabin	1,000 00
Detention and demurage	2,031 75
	$7,000 00

Answer to libel.

In admiralty, United States district court, district of Louisiana.

JAMES M. THOMPSON,
vs.
STEAMER GREAT REPUBLIC, HER TACKLE, apparel, etc. } No. 9499

The answer of William B. Donaldson, master and claimant of the steamboat Great Republic, in behalf of P. C. Haque, James Morrow, and Mrs. —— Hartupee, the owners thereof, to the libel of James M. Thompson against said steamboat, her tackle, apparel, and furniture, etc. And now comes William B. Donaldson, master of said steamboat Great Republic, and saving and reserving all benefit and exception to the manifold errors, uncertainties, and inconsistencies in said libel of complaint, for answer to the libel of James M. Thompson against said steamboat, ask, allege, and propound as follows, to wit:

6 1st. That P. C. Haque, James Morrow, and Mrs. —— Hartupee are the true and lawful owners of said boat Great Republic, a vessel of twenty-two hundred tons burden, or thereabout, engaged in commerce and navigation, carrying passengers and freight for hire between the port of New Orleans, State of Louisiana, and the port of St. Louis, State of Missouri, and that no other persons are owners thereof, and that he, the said William B. Donaldson, is now the master of said steamboat, and as such master has the possession, and is the lawful bailee thereof for said P. C. Haque, James Morrow, and Mrs. —— Hartupee.

2nd. That as to the matters contained in the first article of said libel he answers and says, that he is informed and believes that the said allegations are in part not true; but that the truth is, and he so alleges and propounds, that the said steamboat Cleona was in charge of young, unskilful, rash, and imprudent pilots at the time of the said collision, as can be abundantly shown by their acts in the management of said vessel, and was not in a seaworthy condition, but needed repairs at the time she left the port of New Orleans on her voyage, as is admitted, to Donaldsonville, Louisiana.

3rd. That as to the matters and things contained in the second article of said libel, the same are therein, in part, falsely and untruly alleged and pleaded; for the truth and facts was and is, and this respondent ask, allege, and propound, that the steamboat Great Republic, whereof J. C. Vanhook was then master, steamed from the port of New Orleans, State of Louisiana, on Saturday, the twenty-eighth day of August, 1869, between the hours of five and six o'clock, p. m., bound on a voyage up the

7 Mississippi river to the port of St. Louis, in the State of Missouri, with a large freight and a great number of passengers, and was at that time a staunch, tight, and well-built steamboat of about 2200 tons burden, and was fully manned, officered, and equipped for her said voyage, with skilful pilots and officers in charge of said steamboat. That in the prosecution of her voyage, and between the hours

of six and seven o'clock on the evening of said Saturday, having passed what is known as 9-mile point, on the right bank of the Mississippi, a short distance above Carrollton, (in the parish of Jefferson, State of Louisiana,) and making the usual crossing for large boats to twelve-mile point, on the left bank of said river, William J. Kribben, who then had the watch, and was the pilot at the wheel in charge of said steamboat Great Republic, observed the steamboat Cleona, whereof W. H. King was then master, and of the burden of 118 tons or thereabout, ascending the Mississippi River close into and hugging the left bank of said river, some distance below twelve-mile point, and was more than a mile distant from your respondent's vessel. That your respondent's steamer, being in the usual course of navigation, and in the proper position for large steamers ascending the river at that place, continued on her course, which would have carried her more than two hundred yards to the left of twelve-mile point, and from one hundred and fifty to two hundred yards to the larboard of said steamboat Cleona, had the said steamer been held on the course she was then running, and which those in charge of her ought to have done—namely, parallel to said left bank. That the officer on watch and at the wheel of said Great Republic observing said boat Cleona, that she was holding her course up the left bank and close into shore, continued the
8 same direction of the Great Republic, and the latter vessel would have passed the Cleona in five minutes or less, when suddenly, without signal or warning whatever, and whilst respondent's steamer was not more than three hundred yards below the Cleona, (in the current,) the course of the Cleona was changed obliquely across the river and across the bows of the Great Republic; that there being no signal given by the Cleona, and not being the place for steamers to cross the river, the pilot at the wheel of the steamboat Great Republic supposed that the Cleona had merely sheered off from the shore, and immediately put the helm of the Great Republic to the starboard in order to give the Cleona room to straiten up; that to the surprise of the pilot in charge of the Great Republic, the Cleona continued her direction as if crossing the river, and across the bow of the steamer Great Republic; that shortly after the course of the Cleona was changed, perhaps a half minute or more, she gave two blasts of her whistle in quick succession, one immediately after the other, and kept on her course across the river; that by this time the danger of collision between the two steamers was imminent. Instantly the helm of the Great Republic was put hard a starboard to avoid the Cleona; that the stopping-bells of the Great Republic were rang, and the backing-signal given, and the Great Republic began to back her wheels with the whole force of her engines; that the Great Republic had begun to swing heavily to the larboard, but the course of the Cleona had been so suddenly changed across, and so immediately under the bow of the Great Republic, that it was impossible to check entirely the velocity of the vessel and to overcome her momentum, though every effort was made to do so; nor was it possible
9 to change the course of so large a steamer as the Great Republic sufficiently and quickly enough in so short a space to avoid the Cleona; that to have attempted at that moment to change the course of the steamboat Great Republic to the right of the Cleona would have cut the Cleona in two.

4th. That notwithstanding the precautions against the accident which had been taken aforesaid, and also the excellent, skilful, and seamanlike management by said pilot, assisted by the master, officers, and crew of the steamboat Great Republic, ran foul of the steamboat Cleona.

5th. That as to the matters and things contained in the 3rd article of said libel, the same are therein in great part falsely and untruly stated and pleaded, for the truth and fact was and is that the said steamboats Great Republic and Cleona were both ascending the river Mississippi three minutes (or thereabout) previous to the collision on nearly parallel lines to each other, said line being more than one hundred yards apart; that when the pilot of the Great Republic observed the Cleona running out from the bank, having taken a sheer, as he supposed, there was no other course for him to pursue than to put his helm to the starboard to send the vessel to the larboard further out in the middle of the river, and thus to allow the Cleona to straighten up and resume her proper course near to and along the right bank of the river, there being no possibility of the Great Republic passing at that time to the right of the Cleona; that it was the sudden, unlooked for, unnecessary, and exceeding rash and imprudent change of the course of the Cleona which threw her across the bow of the Great Republic; that when it became evident that the Cleona had not sheered, as was supposed, but was attempting
10 to cross the river under the bow of the Great Republic, (the Great Republic having begun to swing to the larboard already,) the latter steamer was so near the said Cleona that the pilot of the Great Republic was compelled to put his helm hard a starboard, stop the engines, reverse them, and back the boat with the whole force of her engines to avoid the Cleona if possible, and nothing else could have been done to avoid the collision; that it would have been a vain thing to answer the two blasts of the Cleona, as they were given at a moment when she was almost directly across the bow of the Great Republic, and so near to her that it was only practicable to stop the headway of the Great Republic as much as the time and distance would permit, and not possible to avoid striking the Cleona.

6th. That, as to the matters and things contained in the 4th article of said libel, the same are in part falsely and untruly alleged and pleaded, for the truth and fact was and is that there was no room for the steamboat Great Republic to have passed to the starboard of the steamboat Cleona until the Cleona had been running out from the bank more than a half minute—meanwhile the course of the Great Republic had been changed to the larboard to give the Cleona room to straighten up, (the pilots of respondent's steamer supposing that the Cleona had only sheered, and not thinking it possible that the Cleona would attempt to cross ahead of the Great Republic;) that to have attempted to change the course of the Great Republic from the larboard of the Cleona to her starboard when the pilot of the Great Republic discovered that the Cleona was attempting to cross the river would have caused the complete destruction of the Cleona; that the collision resulted wholly from the unskilful-
11 ness, mismanagement, and recklessness of the officers and crew of the Cleona; that, in direct violation of the laws of navigation, the Cleona attempted to cross the river under the bow of the Great Republic, and at a time when the steamer Great Republic was so nearly abreast of the Cleona that it was sheer recklessness and foolhardiness on the part of the officers and crew in charge of the Cleona, and the crossing could only be made with the utmost impending danger, and thus ensued the collision despite the most strenuous efforts on the part of the officers and crew of the Great Republic to prevent it.

7th. That as to the matters and things contained in the 5th article of the libel, the same are not true.

8th. That as to the matters and things contained in the 6th article of said libel, respondent admits that this honorable court has jurisdiction herein.

9th. That all and singular the premises are true.

Wherefore this respondent prays that this honorable court would be pleased to pronounce againt the libel aforesaid, and to condemn the libellant in costs, and otherwise right and justice to administer in the premises.

W. B. DONALDSON.

Sworn to and subscribed before me this 11th Nov., 1869.

K. LOEW,
U. S. Commissioner.

Testimony for libellant.

J. M. THOMPSON, OWNER STEAMER CLEONA, }
vs.
STEAMER GREAT REPUBLIC. }

A. M. GEARY, sworn for claimant, says:

12 Was engineer of the steamer Cleona on the 28th of August, 1869. The Cleona is about 130 tons burden, I think; don't know exactly. She is a stern-wheel boat. She left New Orleans Saturday evening, 28 August, 1869, at 5 o'clock p. m., for Donaldsonville, loaded with an assorted cargo and several passengers; do not know how many. The passengers were to be landed at various points on the coast between New Orleans and Donaldsonville. The first landing we made was at the stock-landing at the upper limits of this city. I suppose we were there between 10 and 20 minutes taking in some cattle. We left there, and our next landing was at the 9-mile point on the opposite side of the river. We put out a small quantity of freight there, and were engaged there about 4 or 5 minutes. We then left the place and proceeded on our way up the river until we arrived at 12-mile point on the Mississippi River. We started there to cross to the opposite shore with the intention of making a landing at Mrs. Waggaman's plantation on the left-hand side going up. Twelve-mile point is on the right bank going up. When near about the middle of the river, as I can judge, I heard our steam-whistle sound once, and from one minute or a minute and a half afterwards I heard it sound again, and in a very short time, or two minutes afterwards, the pilot struck the gong to put on all the steam I had, which was done immediately by my second engineer, John Berry, who was standing at the time closer to the throttle-valve than I was. Almost immediately I heard a crash on the larboard quarter. At the time I didn't know what it was, or what caused it, until I walked across on that side and saw that the steamer Great Republic had run into us with her bows, breaking the cylinder-timber, corner of the hull to the water's edge, fantail en-
13 tirely off, and water-wheel partly off; the hog-chains also broken, and crippling the Cleona so that she could not be handled and had to be towed to the shore.

The effect of the blow almost capsized the boat; I mean that the blow listed her over so much that I thought the boat would capsize—almost causing some persons to drown; two were missing; it may be more, for ought I know. Also, capsized the supper-table and breaking all the crockery-ware; breaking also the dishes, &c., in the pantry, the pictures and bowls in the state-rooms. Some of the freight was knocked over; don't know how much; two trucks and blacksmith's anvils were upset and rolled right off the boat. The anvils were laying near about the middle of the deck; the two trucks were on the starboard-guard.

A man could not stand up when the Cleona listed without holding on

to something. I crossed the deck and got hold of a stanchion on the high side of the boat, and from there stepped on the Republic. This was while she was listed; I thought she was going to capsize, and there was no hope for anybody to be saved on her, and got on the Republic to save myself.

It could not have been more than two or three minutes after I was on the Republic that she backed; the Cleona then righted and I jumped on her.

I cannot say whether the Republic backed or not, but she got loose from us. I could not see her engines move. This collision occurred about 7 p. m. Don't think it was later. It was between sundown and dark; not dark enough to light the lamps; at least there were none lit in the engine-room. Am always particular, as soon as it is dark, to light
the lamps, and I had not one lighted then. The river is near half
14 a mile wide at the place where the collision happened; as wide as
at the foot of Canal street. As far as I know, the river is entirely free of obstructions at that point, and there is ample room for boats to pass up and down without injury; ample room for boats to pass on either side. The Republic never answered our whistles. The Cleona, as far as I can judge, was making between 8 and 9 miles an hour at that time. There was ample room for the Great Republic to pass on either side of the Cleona. As far as I know, everything was down on board the Cleona to avoid this collision. She was properly manned and officered, a full crew and competent officers and men on board; the machinery and everything on board of her was in good working order, and worked well. Don't know exactly how her head was pointed, but we started to make a long crossing. By a long crossing I mean that the head was straightened well up the river. This was when I first noticed her starting across the river—some four or five minutes before the collision. I had just left the engine-room and started to the starboard guard when the collision took place—intending to go up to supper—when I heard the crash and ran back to the larboard guard. I could see from the engine-room objects on either shore, provided they were a little ahead of the boat, or even towards the bow; but could not see on either side or behind on account of obstructions. It was light enough to see objects on either side of the river at time of collision from my position in the engine-room. After the collision the Great Republic towed us to the shore.

The carpenter of the Republic asked me what was broken. I told him I could not tell exactly. He told me that the captain had told him to
ascertain what was broken.
15 (All testimony relating to what the captain of the Republic told
the carpenter objected to by claimant's proctor as hearsay.)

I went over to see what was broken, and when I returned the Republic had left.

Cross-examination:

Did not see the parties who are missing; don't know whether they jumped overboard or were knocked over by the force of the collision. The Republic towed us almost right across a little below M'me Waggaman's place. We were about abreast of the point when the collision occurred; we were near about the extreme point of the 12-mile point—the point is about three miles round from foot to head, as near as I can judge. An engineer pays very little attention to distance. The Great Republic, as near as I can tell, took us in tow about half an hour after the collision; she was right near us all the time. After the collision the Cleona's engine could not move; things were broken so by the collision that the engine could not move.

I think that Mrs. Waggaman's place is a little above of abreast the point. There are two or three places in that neighborhood where we generally make landings, and could not tell exactly which is Mad. Waggaman's place.

Redirect examination:

Have been 20 odd years on the Mississippi and tributaries, and was chief engineer of the Cleona.

A. M. GEARY.

Sworn to and subscribed before me this 21st September, 1869.

K. LOEW, *U. S. Com.*

16 J. A. TROXLER, sworn, says:

Am a pilot by profession—a Mississippi river pilot. Have been in this business for six years past. Been a licensed pilot only three years. Was pilot of the Cleona at the time of the collision. She left at 5 o'clock Saturday evening, on 28th August last, bound for Donaldsonville and various points on the river, between New Orleans and that place, loaded with an assorted cargo for various points on the coast and some passengers.

Don't recollect where we made our first landing, although I was on watch at the time. I took the wheel when she left New Orleans, and retained it up to about half-past six or seven. We made two landings before the collision. Was off watch about 5 or 6 minutes before the collision. Don't recollect where we made our first landing, but think it was at the stock-landing to take on cattle. The second, I know, was at Camille Zeringue; we put out some freight there and remained there about four minutes; this is just below 9-mile point on the right bank of the river, below Carrollton, on the opposite side.

After we made that landing we backed out and started up the river, keeping on the right bank until I got about a mile and a half above 9-mile point; I then headed the boat directly across the river a little up, to go around 12-mile point. I then went off watch, and Mr. Rigley, my partner, relieved me and took the wheel. At this time the head of the Cleona had been straightened up—that is, running parallel with the shore, and about 40 yards from the left bank of the river. As I changed watch I looked back and saw the Great Republic coming around 9-mile point. I sat down at the time in the pilot-house, speaking to my
17 partner, Mr. Rigley; he went over to make a landing at M'd'e Waggaman's place. At the same time the Great Republic was coming acros the river from the same shore we were on, crossing about the same place that we had crossed. While the Great Republic was making this crossing we started to recross the river to make a landing opposite 12-mile point. We did a pretty short crossing, heading up to meet the current.

Before the Cleona headed across, my partner saw the Great Republic about 700 yards behind the Cleona, coming very fast on us. My partner then told me to blow one signal, which I did—meaning by that signal that we wanted to go on the right bank. The Great Republic did not answer the signal; we had to blow another one. Between the two whistles there was about 1½ minutes. I blew the second whistle; my partner told me to do it, and I did it. He told me that the Republic would strike us—this was after I blew the 2 whistles—and added: She will strike us in the middle, about midships; but I will go ahead and let her strike us at the wheel.

Adjourned till to-morrow, 22d Sept., 1869, at 12 m.

WEDNESDAY, *Sept.* 22, 1869, 12 m.

Direct examination of J. A. TROXLER resumed. All parties present.

Immediately after that she struck us; about half a minute after. The Republic was coming very fast; she struck us on the larboard side on the fantail, breaking it off, knocking a hole right aft the larboard stern, and half of the water-wheel off, breaking the cylinder-timber and the pitman on deck; our wheel was hanging on the larboard side. The
18 steamer Great Republic struck us a second time, and broke the guard on the larboard side, and listed the Cleona so that there were four feet water on the starboard guard. The Cleona was at such an angle that a man could not stand up on her; the bar-keeper tried to get out of his room, and couldn't. The Cleona kept rocking about ten minutes; she was suspended that way between two and three minutes; the Republic then got loose, and she righted; she ran into the Cleona a second time. After the shock she kept rocking violently about ten minutes.

The collision knocked the supper-table down, broke all the crockery-ware that was on it, and nearly all the crockery in the pantry. Have not seen anything broken in the rooms; a barrel of coal-oil was lost; it fell overboard; nothing else was lost that I know of. I know that a colored passenger, and the porter of the boat, also colored, and one of the crew of the Cleona were lost, but don't know how they were lost; don't know whether they jumped overboard, fell over, or were knocked over.

After the Great Republic struck us a second time she towed the Cleona to the bank.

I was up in the pilot-house at the time of the collision; when the Republic struck us I was standing up, pulling off my coat and shoes to be ready for any emergency. Before the Great Republic struck us we heard people on her shouting that they were going to strike the Cleona. She was then right close on us, right up on us; don't know exactly how many yards. If the Republic had kept the same course that she was coming she would have avoided the collision. Neither one of our signals was answered by the Republic; it was her duty to answer those signals. It was our duty to give the first signal, which we did.

Our signals were given at the proper time; the Republic was
19 about 750 yards from the Cleona when the first signal was given; she had decreased that distance about half when the second signal was given; I can't tell positively; it was a very bright starlight night; just about dark; we could see a board about a mile off, and also the direction of a boat. I don't know exactly what time it was; it was about half-past 7 I suppose; it was just after supper; my partner had been to supper and came to relieve me. All our lights were lit. It was just about dark when the collision occurred; all the stars were out. Saw the Republic about half an hour before the collision. When the Cleona started to cross from above 9-mile point the Republic was crossing from Carrollton to 9-mile point; this is when I first saw. When we struck on the left bank, and straightened up parallel with the shore, the Republic was crossing where we had crossed. We ran up the left bank about 3 miles, keeping about 40 or 50 yards from the bank. The Republic was following in our track; both boats running parallel with the bank. The collision occurred when we were going to Waggaman's landing; from the left to the right bank. We did not make a very long crossing, nor a very short one neither. We were right in the middle of the river at the time of the collision. Do not know what the width of the river is there; it's as wide there as in front of this city. We had been heading across about 5 or 6 minutes when the collision occurred; sufficiently long to have got about the middle of the river when it occurred. The an-

nexed diagram, marked A, will show the track of both boats from the time we first saw the Republic after leaving Carrollton, until she struck us, and the section of the river embraced in that track.

We headed down stream so as to try to avoid the collision. If
20 we had not done that she would have struck us in the hull and cut us in two.

A printed section of the river and plantations, marked B, is also annexed.

The red dots of Diagram A represents the track of the Great Republic, and the black dots that of the Cleona.

Little B and C on Diagram A represent the position of the two boats at the time of the first whistle; and D and E their position at the time of the second whistle.

The Cleona is a stern-wheel boat; don't know her burden; she is a small boat. At the time of the collision she was running about 7 miles an hour. The Republic is a first-class boat; she is a very large side-wheel boat; don't know her tonnage; she was running about 12 miles an hour at the time of the collision, I suppose—don't know exactly. She is a good deal faster than the Cleona. I suppose she is faster than the Cleona; she might not be doubly faster. When she first came in sight of us she gained rapidly. No obstructions in the river at the place of collision—clear and free of all obstructions; there was at least 30 feet water about 50 yards from the left bank where I started to go to Mrs. Waggaman. There was ample room for the Republic to pass us without colliding. Everything was done on our part to avoid the collision. My partner tapped the gong three times for the engineer to put more steam on our boat, and the engineer gave more steam. None of our signals were answered in any manner; they did not appear to pay any attention to them on board the Republic, but kept on following us. The Republic was not

properly managed; she should have stopped if she didn't under-
21 stand our whistle; if she understood our whistle she didn't stop; never ceasing her wheels until after she struck the Cleona. She could have stopped after our first whistle, and even if she had stopped immediately after our second whistle she could have avoided the collision. She could have stopped immediately after the second whistle; half a second would have been sufficient in time to avoid the collision. Don't know anything about the pilot of the Great Republic being drunk. Did not go on board of her; my partner went on board.

Cross-examination:

Am not on the Cleona now, she is laid up. I expect to go on her when she goes out. We made the left bank about 3½ miles below 12-mile point when we crossed. After making the left bank we proceeded up that bank about 3 miles, keeping about 50 yards from shore. The Great Republic came about 60 yards from that shore, and proceeded up, keeping about same distance from the shore.

I first observed the Great Republic changing her course immediately after I blew the first whistle—about a second after—she was then about 750 yards from us. I observed a change in her course immediately after the blowing of our first whistle; the Republic was then only about 06 yards from shore. From the points "Y" and "Z" there is about 1½ miles, and these two letters represent the position of the two boats when the Republic started across, and I saw her starting.

There were not more than 10 yards difference between the tracks of the Republic and Cleona on the left bank. I suppose there were about 900 yards from the place where the Republic first changed her course to where she struck us.

22 Question. If you had continued your course up the left bank for five minutes longer, and had not attempted to cross the river, would not the Great Republic have collided with you going on the course she was?

Answer. I don't think she would.

If the Republic had continued her course instead of changing it there would have been no collision, and it was the proper place for her to continue her course where she was when I blew the first whistle. Continuing on our course five minutes longer the Republic would have passed us—I mean before we changed our courses. We could have stopped the Cleona at that place in 2½ minutes. If we had stopped her, there would have been nothing left of us. When the Republic changed her course it was too late for us to stop the Cleona. The first whistle we blew was to give notice of our intention to cross; at that time we had no fear of a collision.

J. A. TROXLER.

Sworn to and subscribed before me, this 22d Sept., 1869.

K. LOEW,
U. S. Commissioner.

Adjourned till to-morrow, 23d inst., at 11 a. m.

THURSDAY, *Sept.* 23, 1869.

All parties present.

W'M H. RIGLEY, being duly sworn, says:

Am a Mississippi river pilot for 5 years. Am a licensed pilot since 3 years. Was pilot on the steamer Cleona on the 28th August, 1869. Left this port at 5 o'clock p. m., on the 28th of August last, bound for Donaldsonville and intermediate landings, having on board an assorted
23 cargo and some passengers. The first landing was at the stock landing, to take on some cattle; I guess we must have remained there 20 minutes or half an hour. The next landing was at Camille Zeringue's place, opposite the Greenville coal-yard, and put out some freight, and were detained there five or ten minutes. I came on watch at the head of the bluff-bar, where the letter C is on Diagram A. The Republic was then at the foot of the Willows, 600 or 700 yards in the rear, where the letter Z is on same diagram. The track of the Republic ought to be in our track at the letter Z. She was directly in our wake. When I looked out from the pilot-house I had to turn my head directly back to see her. If a cannon-ball had been shot from our boat it should have passed right between the chimneys of the Great Republic. When I took the wheel my partner told me that Mrs. Waggaman's landing was the next; both boats were then heading the current right up, and distant 20 to 25 yards from the left bank. As soon as I took the wheel I headed over to Waggaman's landing, and probably a minute elapsed after I started across when I told my partner to blow one whistle, which was done, the Great Republic not answering, and gaining on us fast, probably not more than 300 yards distant. Probably 1½ or 2 minutes elapsed. I told my partner to blow one whistle again, which was done, the Great Republic not answering. I then saw that there was going to be a collision, and saw she'd strike us about midships the way she was heading. I told my partner before she should cut me in two she should cut the wheel off, which was done.

The Diagram A represents the position of the boats at the time
24 of the collision. I put my helm hard astarboard for the purpose to give the Republic the wheel instead of letting her cut the Cleona in two. The effect of this was to swing the head of the Cleona down

stream. Before doing this, I tapped the gong three times to the engineer to put all the steam he had on our boat, which was done—thinking by that to avoid the collision. Had the Republic stopped her wheels within a hundred feet the collision would have been avoided.

The Republic struck us on the larboard fantail, damaging us pretty bad, cutting away the entire fantail, the transon, larboard-cylinder timber, larboard flange, and all the wheel-arms and planks, and three flanges. The entire cabin was knocked out, breaking about 200 to 250 dollars' worth of crockery. Listing the Cleona over and so that nobody could stand up without holding to something, several persons were knocked down by the collision. There are other damages done of which I know nothing. There was some freight knocked over; there were also some trucks, anvils, and two bulkheads knocked over on both sides of the boat. I saw three men in the river; I know one man was picked up. The listing over was caused by the Republic shoving us up the river against the current. I never left the pilot-house until the Republic came up a second time. She backed once, and then came into us a second time, cutting through the nosing. After the collision the Cleona was a complete wreck, unable to move and leaking badly. The collision occurred between sunset and dark; the lamps were lit in the cabin of both boats; our signal-lamps were not out; don't know whether the Republic's were; have not noticed any signal-lights on the Republic; they were not necessary at that time; the law compels boats to have them
25 at dark, and it was not dark; a man could be seen on either side of the river. After my partner blew the second whistle I could see the people on the Republic. At the place of the collision the river is wider than it is opposite Canal street. We had been heading across for about four minutes before the collision. Had not been on watch more than five minutes, and had reached about the middle of the river when the Great Republic struck us. From the time the first whistle was blown I paid particular attention to the movements of the Republic; she left oblique to cross the river, appearing to follow us—steering right for us. Her proper course would have been to keep up the left bank for 1½ or 2 miles above our crossing, or, rather, above where we turned to make a crossing.

When I speak of the left bank, I always mean the New Orleans side. I did everything that was in my power to avoid the collision. I was as cool and as calm then as I am now. It was not possible for me to avoid it. I did everything to avoid it. I dared not back her or stop her; had I done it, the result would have been the total loss of the boat; she would have been cut in two. I gave the proper signals, and at the proper times; I mean the first signal and also the second one. When I saw that she did not answer the first, I blew the second.

It was the Republic's duty by law to answer my signals; it is the Government's regulation for pilots.

By this first signal, I meant for her to keep to the right of me and I to the right of her. There was plenty of time and plenty of room for her to have gone to my right—room enough for six boats abreast of one another between me and the left bank. The river is there wide,
26 clear, and free of all obstructions clear jam up against the bank. The Republic could land there with her hull against the bank.

I know that the pilot of the Republic could have avoided this collision; it laid altogether with him, owing to the position of the two boats.

The Cleona, I believe, is a boat of between 118 and 125 tons' burden; a stern-wheel boat, and was running between seven and eight miles an hour at the time of the collision.

The Republic is the largest boat in the river; a side-wheel boat; don't know her tonnage. At the time of the collision, I guess the Republic was running from 12 to 13 miles an hour.

From my position in the pilot-house I could not see the wheels of the Republic; but I judge from the collision and its effects that she did not stop them until after, as she kept shoving us up the river for three or four minutes after she struck us; she then backed out and we righted. The collision knocked down the lamps in the cabin, and the cabins took fire in two places. I went aboard the Republic after the collision.

Cross-examination:

I will be twenty-five this coming November. I expect to go on the Cleona as pilot when she goes out.

The course of the Great Republic is not exactly correct in the diagram. It ought to be as near into the left bank as the letter Z on Diagram A.

Question. If the Cleona had continued her course up the left bank, as she was going, instead of crossing, and the Republic had continued her course as she was at the letter Z, would she have run over you?

Answer. No; because she certainly would have pulled out.

Question. Why?

27 Answer. Because there was not room enough between the Cleona and the bank.

Question. Then, had she not pulled out, would she have gone over you?

Answer. Yes, I think she would.

It was a minute and a half or two minutes after my first whistle that I observed the Republic change her course. She was steering right on us when I blew the second whistle; she obliqued with us. From Z to C there's 600 or 700 yards. Our usual course in running the 9-mile point is to keep the right bank for ¾ of a mile above the point, and then cross. We started to cross just at the head of the bar. The bar on the left bank is about 700 yards, but it is flat there more than a mile. From where the Republic was to the head of the bar is 600 or 700 yards; did not notice if the stars were out when I took my watch.

W. H. WRIGLEY.

Sworn to and subscribed before me this 23d day of Sept., A. D. 1869.

K. LOEW,
U. S. Commissioner.

Adjourned till to-morrow, 24th September, 1869, at 11 o'clock a. m.

FRIDAY, *September* 24th, 1869—11 o'clock a. m.

All parties present.

DAVID MCCAUSLAND, being duly sworn, says:

Was mate of the steamer Cleona on the 28th of August, 1869, at the time of the collision with the Great Republic; have been a mate on the river for the last five or six years. We left this port on Saturday,

28 28th August last, at 5 o'clock p. m., bound for Donaldsonville, loaded with freight and passengers for various points on the coast. The first landing we made was at the stock landing to take in some cattle; might have remained there for half an hour; am not positive. I am not positive that we made any other landing. I think we made one at some particular place, but don't remember if it was not the trip before. The Cleona was making three trips a week to Donaldsonville. I know nothing further until the collision occurred. Just previous to the collision—just before supper—I was washing myself. I should judge it was then 7

o'clock. It was getting dark, but you could see both banks of the river, and small objects on same. I think the river is a little wider there than it is here. After the collision I looked to see which bank we were closest to, and could see the bank plain. I could not say which was the closest; think they were about equal distance—the boat was about the middle of the river.

When I was engaged in washing myself I heard our whistle blow once; heard no answer from the other boat; about 1½ or 2 minutes after I heard another blast, which was not answered either; at this time I was still in the wash-room, about getting through washing.

Then I went out from the wash-house to the cabin, and sat down to the supper-table, and commenced to take my supper. I was thrown right across the table by the collision of the Republic with the Cleona. The table and everything on it was upset. I then got up and ran down to the lower deck, and saw the Great Republic a kind of swinging out from us; the Cleona then righted. The collision was very violent—it appeared so up stairs where I was; smashing the wheel, fantail, cylinder-
29 timbers, and stove a hole in her, knocking overboard two trucks, and blacksmiths' anvils, and some freight; know nothing about the damage to the crockery—no more than hearing the crash. The boat was set on fire aft, the cooking-stove being knocked over. The river is wide and clear at the place of the collision; I know that we were as close to the middle of the river that we possibly could be when the collision occurred.

There was abundance of room on either side of the Cleona for the Republic to pass and avoid this collision. We had some freight for Waggaman, and intended to have landed there. The collision rendered the Cleona a perfect wreck, unable to move to shore. When the Cleona left the port she was properly and fully manned and officered. I always considered the pilots skilful, and their reputation as pilots was good; they had the reputation of being careful in handling a boat. There was a fore-and-aft hog-chain broken, and her chimney-guys also.

Cross-examination:

If my services are required, I suppose I shall remain on her. When we intend to make a landing we generally blow three whistles, one after another, with an interval of half a second between each, I suppose. I had a crew of twelve men and a watchman.

Redirect examination:

It is usual with our boats when about to make a landing to blow three whistles, one after another, with probably an interval of one or two seconds between each. On this occasion we did not blow any
30 whistle for a landing, because we did not get close enough. The whistles that were blown were not for a landing.

Re-cross examination:

Cannot tell when the Cleona commenced crossing the river.

Redirect examination:

Could not have been more than three or four or five minutes after the second whistle that the collision took place; don't know McCausland.

Sworn to and subscribed before me this 24th Sept., 1869.

K. LOEW,
U. S. Commissioner.

Testimony for claimant.

ALFRED B. DAVITT, duly sworn, says:

Am now and was second clerk on board the steamer Great Republic on 28th August, 1869. She left this port on that day, between 5 and 6 p. m. I witnessed the collision between the Republic and Cleona; was then right at the starboard chimney on the hurricane deck; previous to that I was in the pilot-house. The first time I saw the Cleona she was about three or four hundred feet of us, on *on* the starboard side of the Great Republic, 3 or 400 feet ahead; I was then in the pilot-house. I can't tell exactly how far she was from our starboard side, but think it might be 75 yards, or something in that neighborhood. She was steering off to the left from the left bank. This was a few minutes before 7 o'clock.

31 Don't know how far the Cleona was from the left bank when I first saw her. I heard two whistles given by the Cleona; they were given just as quick as they could blow them. The two whistles were first given after I first saw her; she was then lapped over us, and ahead of us about one hundred feet—in that neighborhood. Did not observe the Cleona when she first started off from the left bank. I was lying down on the bench in the pilot-house. I got up from the bench because the pilot, Mr. Kribben, who was at the wheel, made a remark, that little boat was running off, or something to that effect. I then got up immediately and saw the Cleona as I described her above.

The direction of the Great Republic was not changed whilst I was in the pilot-house. I didn't notice any; it was not changed while I was in the pilot-house; I am positive of that fact; after I was up. The Republic was considerable distance from the left bank when I got up. I don't know how far. When Mr. Kribben called my attention to this boat he rang both stopping-bells, and at the same moment he rang the backing-bell.

Captain Van Hook was on the roof the first I saw him; this was just before the collision.

Question. What did the captain do or say?

(Objected to, on the ground that it is a hearsay evidence, and not admissible.)

Answer. He halloed up to the pilot to stop the outside wheel.

Question. What did the pilot reply?

(Objected to as hearsay.)

Answer. It was stopped.

Question. Was there any other observations made by the pilot at the time, as you remember that he had done?

32 (Objected to, as the question seeks to elicit hearsay evidence.)

Answer. I heard him say that he had stopped and backed the boat.

I had seen the pilot ring the stopping and backing bells prior to this conversation. I halloed down one side thro' the speaking-trumpet, on that side to the engineer, to back her strong, and the pilot at the same time halloed down thro' the speaking-trumpet on the other side to the engineer; don't know what words he halloed. This took place a very short time after I was in the pilot-house; cannot say exactly. I reached the starboard chimney from the pilot-house just as the collision took place.

In the course that I had to go out of the pilot-house to get to the starboard chimney, I think is about 150 feet. I didn't pay any attention and did not notice in what part of the river the collision occurred.

All I saw were the chimneys of the Cleona. Was on the roof and did

not see more; that's all I noticed. I could see in what direction the Cleona was lying.

The Great Republic struck the Cleona at the wheel on the larboard side. As near as I can remember, the Cleona was very near straight across the river. After she struck, I tried to get somebody on the other boat to get a line out to make her fast. I had gone down on deck.

It was about a minute after the collision after I reached the main deck. People were rushing aboard our boat from the other boat. The Great Republic struck the Cleona but once, and then came alongside of her to take her in tow, and carry her to the shore. Mr. Kribben appeared to me as calm as ever; I saw him at the time of collision; he appeared to me as such.

33 Cross-examination:

I went in the pilot-house about half an before the collision. The Great Republic was then between New Orleans and 12-mile point; don't know exactly. She made a landing at Carrollton after leaving this port. I laid down on a bench after I got in the pilot-house, talking with the pilot and his wife, who was also in the pilot-house when I first went up.

I could see all about by turning my head, the bench coming above the lower part of the window. I was lying down, facing towards the pilot at the wheel. I did not pay any attention to the course of the boat. A remark made by the pilot, Mr. Kribben, first caused me to get up. The boat was going up the river, nearing 12-mile point, and was closest to the left bank. Don't know exactly the distance she was from it. It was a considerable distance.

Question. Was she more or less than 200 yards?

Answer. I don't know.

Question. Was she more or less than 300 yards?

Answer. Don't know whether she was or not.

Question. Was she more or less than 500 yards?

Answer. She was less than 500 yards.

Question. Was she more or less than 400 yards?

Answer. I don't know.

Don't know how wide the river is there. I think the river is over a mile wide over there; that's my idea of it.

Don't know exactly in what part of the river the collision occcured. I never paid any attention to it after I left the pilot-house.

34 I never paid any attention to the course of the boat until after I got up, and from then the pilot never changed her course while I was in the pilot-house.

I never paid any attention to the course of the boat, only I was alongside of the pilot, and he never turned her wheel; and he couldn't turn it unless I seen it.

As soon as I got up the stopping-bells were rang, and immediately after the backing-bells were rang. This was before the Cleona blew her two whistles. The Cleona blew her whistles about a minute after. The Cleona was off to our right when I first saw her, between 3 and 400 feet ahead of us, and I suppose she was about 75 feet to the right of us.

Don't know how far the Cleona was from the bank of the river; she was some distance from it, heading quartering off to the larboard—I mean, I thought she was sheering on the bank. She had run away with the pilot; it was what I thought.

Question. Was she not steering for the right bank of the river in almost as straight a line as she could draw?

Answer. No, sir; she was quartering, as I have stated before; that is, when I first saw her.

Question. Was she not headed as straight across the river as she could go when she was struck?

Answer. Pretty nearly so.

We were not very far from the Cleona when she blew her first whistle, but could not tell the exact distance. I think she was a hundred feet from us. She was then quartering in the river—not straight—and then about lapped over us. I was in the pilot-house when the whistles were first blown by the Cleona. I only heard one blowing—two whis-
35 tles; one signal, rather, as called—two whistles. I left the pilot-house immediately after that and ran down to the chimney, a distance of about 150 feet—in that neighborhood—and got there just as the collision took place. I suppose the Republic was going at the rate of 12 miles an hour; was not going at that rate at the time she stopped her engines. Did not see the engines stopped, but after I went down on deck I saw the wheels stopped. This was after the collision. Don't know whether they were stopped at all before the collision. All I know is that I saw the bells pulled and heard them ring. I could not tell whether they were stopped, because the Republic do not escape out as other boats do.

The signal of the Cleona was not answered by the Republic. The Republic gave no signal before the collision; but she gave one afterwards to call another boat.

It was daylight when the collision occurred; just getting dusk; you could see objects on the bank. The collision was not very violent. The Great Republic struck the Cleona once that I know of.

No one on the Republic refused to take passengers on board that I know of; we took some of them.

It was a very short time after I got up that I saw Captain Van Hook on the hurricane-deck; don't how long he had been there. I can't say how many minutes it was before the collision; it was a short time.

Cannot give any time as to the time from when I got up and left the pilot-house; it was a very short time.

Question. How long was it after you got up that you left the pilot?

Answer. Cannot give any time; cannot give the exact time; it was a very short time.

36 Took hold of the Cleona right away—that is, as soon as we could. Not more than ten minutes after the collision we commenced to take hold of her. It was some time, however, before we succeeded in bringing her to the bank.

Redirect examination:

"After I went down on deck I saw the wheels stopped;" I mean to say I saw that one wheel was stopped. From my position at the chimney I could not see the wheels at all.

ALFRED B. DAVITT.

Sworn to and subscribed before me, October 19, 1869.

K. LOEW,
U. S. Commissioner.

Testimony for libellant.

HENRY A. EALER, being duly sworn, says:

Am a Mississippi river pilot by profession. Have been on the river since 1835, and a pilot since 1838.

Am acquainted with W. J. Kribben for 20 years. Never was employed with him on the same boat but once—about 11 years ago. Am very well acquainted with his character.

For the last three or four years he has been given to drinking a great deal. When I say "drinking," I mean spirituous liquors and lager beer. I never saw him at the wheel of a boat in an intoxicated condition. When I was with him he was a very steady man.

The first that I noticed of his drinking was about four years ago. Am not a drinking man; never go around to drinking-places; all I know of Kribben's drinking is what I stated above and what I saw.

37 Cross-examination:

Kribben was looked upon as a very good pilot when he and I were together. A great number of the pilots are addicted to drinking. By some persons Kribben is considered a good pilot, and by others not.

Question. What is Kribben's reputation now as a pilot?

Answer. I do not regard any man drunk at the wheel as a good pilot.

(Objected to by proctor for claimant as not responsive to the question.)

Upon this objection being made, witness answers:

By some he is considered a good pilot and by others not.

Redirect examination:

He is not regarded as a good pilot by some persons simply because he drinks too much.

I don't consider any man addicted to intoxication a competent pilot. I have seen Mr. Kribben drunk ashore, as I have already stated a number of times. He was drunk—so much so that I noticed it.

HENRY A. EALER.

Sworn to and subscribed before me, this 29th October, 1869.

K. LOEW, *U. S. Com.*

DAVID KLOTTER, sworn, says:

I am a carpenter by trade, and have been for the last 16 years. I worked on the Cleona on 28 August last. The boat left the port
38 of New Orleans at 5 p. m. in the evening of her collision with the Great Republic. We made two landings before the collision; don't know the places.

I was on the hurricane-roof at the time of collision, and had been there about 10 minutes before the collision.

While I was going up on the roof the pilot blew the whistle; after awhile he blew another whistle. About 4 or 5 minutes after he had blown the first whistle he blew the second. About 5 or 10 minutes after the second whistle was blown the Republic struck the Cleona.

At the time of the second whistle the Republic was 6 or 700 yards behind.

The Cleona was crossing the river when the first whistle was blown. She had to put out some freight across the river and make a landing.

Being shown the 2 Diagrams A and O, says: I cannot point out the position of the two vessels. All I know is, that the Republic was 6 or 700 yards behind the Cleona when she blew a whistle in crossing the river.

The Republic was a little off to the left of the Cleona, and about 6 or 700 yards behind her. She was about 40 or 50 yards to the left of the Cleona.

The Republic was in that position before the Cleona crossed the river and blew her whistle, and was then some 6 or 700 yards behind the Cle-

ona. Had the pilot of the Republic stopped only one lick of her engine the Cleona would have been clear of her. Ten feet was sufficient to clear her.

The Republic followed her course to the left hand when the Cleona crossed the river; had she gone to the right hand there would have been no collision.

The Republic saw that the Cleona was crossing the river, and she followed her to the left.

39 The Republic did not stop her engine up to the time of her striking the Cleona. Saw the Republic's wheels in motion up to the time of the collision, from the roof of the Cleona, where I was standing, and it was daylight at the time. It was not dark. The Republic gave no signals or notice of any kind.

If the Republic had borne to the right the accident would not have occurred. There was plenty of room to the right; 3 or 4 boats could have gone to the right. We were about the middle of the river at time of collision. The river at that place is about as wide as in front of St. Peter street.

The Cleona could do nothing to avoid the collision. She was making right across the river to make a landing right opposite. The Cleona could not escape from the Republic. She could not get away from her.

The Cleona received a hard shock from the Republic; everything stove in on the Cleona; some thrown overboard—the trucks, tarpaulin, &c. The boat was keeled over and the water rushed in the hatchway. The Cleona was hit right in the stern part larboard side, the wheel broken, and fan-tail timber, &c.

After the two boats struck they separated in about 3 or 5 minutes. The Republic backed out and in doing so she hit us again, but not so hard as the first time.

Think three men were knocked overboard. Two were drowned and one saved by swimming ashore.

Cross-examination:

The Republic cut through the guard, struck the hull, and broke three planks above the water. These planks are some 8 inches wide.

40 The bow of the Cleona was directly across the river at the moment of the collision.

When the Republic struck the Cleona she stood at right angles with the Cleona, and the Cleona was lying directly across the river.

If the Cleona had been ten feet further across the river there would have been no collision.

Redirect examination:

The witness cannot give a scientific explanation of the words right angle, but with two pieces of paper he marks on the diagram the course of the two vessels, the Cleona crossing the river and the Republic coming directly into her, showing that she struck the Cleona at right angle.

When I first saw the Republic she came up about the middle of the river. I mean a little more to the left than the Cleona, but away behind.

The question being put by the commissioner, he says: When I first saw the Republic she was running about the middle of the river, a little more to the left than the Cleona. This is my explanation of my previous answer.

Can't tell exactly, but the Cleona was about 3 or 400 yards from the left bank when she crossed the river.

The Cleona was about 300 yards from the shore, city side, when she began to cross. The Republic was about the middle of the river.

DAVID KLOTTER.

Sworn to and subscribed before me, this 30th Oct., 1869.

K. LOEW, *U. S. Com.*

41 *Statement.—Steamer Cleona, trips No.* 1 *and* 2, *April*, 1869.

Freight, trip No. 1		$501 92
Passage, " " 1		50 50
Freight, " " 2		215 30
Passage, " " 2		57 00
		$824 27
Fuel	$237 00	
Stores	200 61	
Wages	206 05	
Expense	74 80	
		718 46
Net gain in two trips		$106 26

E. & O. E.

Weekly statement.—Steamer Cleona, trips 18, 19, 20.

Freight	$907 18	Wages	$292 62
Passage	322 50	Stores	101 13
		Expense	89 55
		Fuel	343 00
Total	$1,229 68		$846 30
Receipts			$1,229 68
Expense			846 30
Gain			$383 38

42 *Weekly Statement.—Trips* 36, 37, *and* 38.

Steamer Cleona, W. H. King, master, from New Orleans to Thibodaux and return.

Freight account	$844 90	Fuel ac't	$325 00
Passage account	397 55	Stores	195 65
		Wages	309 20
		Expense	102 95
Total	$1,242 45		$932 80

RECAPITULATION.

Receipts	$1,242 45
Expense	932 80
Gain	$309 65

E. & O. E. J. A. COMSTOCK, *Clerk.*

NEW ORLEANS, *July* 12, 1869.

Total receipts trip No. 1		$552 42
" " " " 2		272 30
" " " " 3		410 80
" " " " 4		282 92
" " " " 5		192 72
" " " " 6		260 15
" " " " 7		128 55
" " " " 8		320 50
" " " " 9		289 55
" " " " 10		349 25
" " " " 11		516 85
" " " " 12		159 49
" " " " 13		359 95
" " " " 14		325 65
Amount rent of bar, one month		75 00
Total		$4,496 10

43 EXP NDITURES.

Fuel	$1,526 30	
Stores	782 83	
Wages	1,264 67	
Expense	640 80	
		$4,214 70
Gain in 14 trips ending May 16		$281 40

P. E. Durand	$42 86
Do do	47 35
P. Higgins	15 00
Mackinson & Lagan	5 35
Mackinson & Lagan	15 55
D. C. McCan	21 01
Bostick & Seymour	75
Jos. Brown	13 29
Total	$161 16

Statement—Trips No. 3, 4, and 5, ending April 26th, 1869.

Up freight, trip No. 3	$277 05
Down " " " 3	91 25
Passage " " 3	42 50
Up freight " " 4	118 80
Down " " " 4	118 67
Passage " " 4	45 45
Up freight " " 5	131 60
Down " " " 5	8 12
Passage " " 5	53 00
	$886 44

44 EXPENDITURES.

Fuel, as per wood book	$322 50	
Stores	183 99	
Wages, as per portage	253 85	
Expense account	76 80	
		$837 14
		$49 30

Net gain for 3 trips, $49 30.

Weekly statement—Steamer Cleona, trips 15, 16, *and* 17.

Freight	$772 05	Wages	$266 37
Passage	272 50	Stores	178 65
		Expense	160 37
		Fuel	315 00
	$1,044 55		$920 39
Receipts			$1,044 55
Expense			920 39
Gain			124 16

Statement—Trips 32, 34, *and* 35.

Steamer Cleona, W. H. King, master, from New Orleans to Thibodeaux and return.

Freight	$582 95	Wages	$287 35
Passage	516 25	Fuel	300 00
		Expense	164 65
		Stores	173 15
	$1,099 20		$925 15

45 RECAPITULATION.

Receipts	$1,099 20
Expenses	925 15
Gain	174 05

E. & O. E. J. A. COMSTOCK, *Clerk.*

NEW ORLEANS, *July* 5, 1869.

Testimony for libellant.

WM. H. KING, sworn for libellant, says:

Was captain of the Cleona on the 28th day of August last; am still captain of her. Have been engaged in running steamboats on the Mississippi River for twenty-five years; mostly engaged in the Lafourche and New Orleans trade. Left New Orleans at 5 o'clock p. m. for Donaldsonville on the 28th of August last; first stopped at the stock landing for ten or fifteen minutes taking on cattle; then made another landing at Zeringue, just below 9-mile point, on the right bank of the river; was then standing on the hurricane roof. The Republic was then making a landing at Carrollton, distant about two miles from the Cleona, I think; we crossed about 9-mile point; I remained on the roof until we had got

across and had straightened up on the other side, i. e., on the left bank of the river; was then about 50 yards from said left bank; continued to run up that bank about two miles, keeping about the same distance from shore. When I left the roof I went on the boiler-deck and sat down, and remained there until I heard my boat blow one whistle; I then got up from the larboard and went to the starboard side; looked
46 behind and saw the Republic coming right into the Cleona; when I saw the Republic coming there had been two whistles blown, and at least four or five minutes' interval between each. When I first saw the Republic, after I heard my boat's first whistle, she was not more than 200 yards behind us; this was about four minutes after the first whistle was blown; I didn't see her when the first whistle was blown; I had to walk to the starboard side and look out to see her. I judge that there were about four minutes' interval between the two whistles from the time it took me to go from one side to the other of the boat; the second whistle was not blown till I had just got to the starboard side. I was in no hurry to go at first, because I thought it was blown for a landing, and I did not think the Republic was more than within a mile of us. The Henry Ames had just passed us. The Cleona was headed to make a long crossing, intending to land at Madam Waggaman's at the time of collision.

Could not tell how long we had been running from the left shore before the collision. Both boats were running about the same way, and the collision happened right in the middle of the river.

Being shown diagram marked A, and asked which is the track of the Cleona and that of the Great Republic, witness answers:

If the dots in black ink marked Z C are within fifty yards from the shore, then they represent track of the Cleona; the Republic's track was just behind us—directly in our wake; there was plenty of water there. The proper track for the Republic would be the line now drawn by me in red ink, and marked A A; some large boats go above
47 12-mile point and then cross to the other side, as shown by red line B B on Diagram A. Boats like the Republic keep from 50 to 60 yards from the bank going round the point, and they keep about the same distance from the bank all the way up after crossing 9-mile point. There's plenty of water at 12-mile point—I reckon about twenty feet. Boats can go right up at the point, where there is plenty of water, but below the point where the boats struck, to cross the shore, big boats can't come nearer than 50 or 60 yards. The river is about a mile and a half to two miles wide where the collision occurred—just as wide as in front of Canal street. I think we were about 400 yards from the left shore when the collision happened; cannot say exactly. The collision was very violent. The Cleona was struck on the starboard side—I mean on the larboard side at the fantail, carrying it away, cylinder-timber, water-wheel. The cook-house was all knocked to pieces with its contents; the bulk-heads in the engine-room was knocked out overboard; the stairs going from the engine-room to the boiler-deck were knocked out overboard, and the boat's porter was also knocked overboard and drowned. There were some freight, consisting of two barrels of coal-oil, two barrels of apples, which were knocked overboard. Two demijohns of whisky were broken, four barrels of corn-meal overboard also; two pairs of trucks and anvil were also knocked overboard. That is all I know. I think the Cleona was much injured. The boat's cabin and all her crockery-ware were broken from the effects of the collision.

I don't think the cabin can ever be repaired, as it is so twisted; all this is in consequence of the collision. The boat's hull was cut to

48 the water's edge. After the collision the Republic towed us to shore. At first she started to leave us; we halloed that we were sinking; she came back and towed us to the shore. The next day we sent to the city and employed a tug-boat, and were towed to New Orleans, and were detained there undergoing repairs in consequence of the collision for one month.

The bill annexed to the libel being shown to witness, he says: I think it is correct; I know that it is correct, that the items charged in the bill were actually paid by the Cleona, for damages sustained by her in consequence of the collision with the Republic, except the last two items of the bill, to wit: Damage to cabin, $1,000.00, and detention, $2,037.75, which I think are correct; it is a mere matter of conjecture.

I know that the cabin is seriously injured, and that it cannot be refixed; it is twisted, and the columns are broken; six columns in the cabin are broken. I think it will prove a serious injury to the boat; it will constantly be working loose; it does now work loose, and keep continually shaking with the motions of the boat, and new pieces had to be put to all doors in the cabin; there are four doors in the cabin. Don't know how much it would cost to rebuild the cabin; I suppose it would cost about $3,000.00, but am no carpenter, and cannot say.

The boat is worth about $2,000.00 nett earnings a month—that is, she was making more than that at that time. The receipts showed that she was making from $1,200 to $1,500 a week, gross receipts; and this would give her above $2,000 nett earnings a month. She was making (3) three trips a week.

49 The whole injury caused to the Cleona by the Republic is fully ($7,000.00) seven thousand dollars. This includes repairs, loss of freight, detention, and other expenses incidental to the repairs. They were all caused by the collision.

Have been a steamboat owner and captain for about fifteen years, with the exception of the present time.

As far as I could see, the Cleona did everything in her power to avoid this collision.

There was plenty of room for the Republic to pass on either side of the Cleona.

There was enough room for the Republic to pass between the Cleona and shore at the time the Cleona started to cross from the left shore; don't know that the Republic did anything to avoid the collision, but rather think that she tried to run right over us from what I could see.

When I went to look out, after our first whistle, and saw the Republic, I think her wheels were moving ahead; and I know they were moving ahead when she struck us, because I saw them with my own eyes, and because she struck our boat, and listed her over so that the water ran into the main hatch by shoving her around against the current, and retained her into that position about four minutes; she then backed clear of us, and then came in again and struck us a second time about the fantail, breaking the guard.

This collision would have been avoided had the Republic kept her proper course on the left bank. I could not stand up after the collision; I had to throw myself down and hold on to something to prevent myself from going overboard; one man close to me slipped overboard—he couldn't hold on; another one was knocked overboard and drowned.

50 Cross-examination:

Above a mile from 12-mile point the Cleona started to cross the river to land at Madam Waggaman's; I think the Cleona was about 50 or 60 yards from the left shore when she began to cross.

I think the whistle was blown the moment she turned to cross. When I heard the first whistle I was sitting on the extreme end, front, on the boiler-deck, starboard side; the boiler-deck is nearly square. The Henry Ames passed us about 300 yards below—about 25 minutes before the Republic struck us—about a quarter of a mile above the point where we crossed over to the left shore. We exchanged signals with the Henry Ames; I think two whistles, which were responded by the Cleona; the Ames gave the first signal; the Ames passed about 50 to 60 yards outside of us, on the larboard side of us. I would have run the Cleona two months before putting her in dock had it not been for this collision; I would have had her examined by the inspectors before I could tell what repairs I would have had to put on her; she had been docked about ten months or a year before. Boats have to be put in dock about every year. The Cleona, I think, is between three and four years old; boats like the Cleona live generally about eight and nine years; know boats like her who are now fifteen years, but they had to be built over again; when boats of the class of the Cleona are four years old it does not cost as much to keep them in running order than to buy a new one.

Witness presents to the proctor for the claimant certain statements, marked Nos. 1, 2, 3, 4, 5, 6, 7, and 8, which the claimant now offers in evidence, to which the proctor for libellant objected, as being irrel-
51 evant, without dates, or anything to make them intelligible, and offers now to produce the balance-sheets taken from the books of the boat, which will show her earnings, disbursements, and receipts.

Re-examination:

At the time of the collision the Cleona was in a better condition than she is now.

his
W. + H. KING.
mark.

Sworn to mark affixed before me, this 2nd November, 1869.

K. LOEW,
U. S. Commissioner.

Testimony for libellant.

B. F. LITTRELL, being duly sworn, says:

Am a pilot by profession, and have been since 1853. Was a passenger on the steamboat Great Republic on 28 August last, on the evening of the collision with the steamboat Cleona.

We left New Orleans between 5 and 6 p. m. Made a landing at Carrollton. After leaving Carrollton, was sitting on the railing that runs around on the boiler-deck. Remained in that position until the collision was bound to occur, and then left my seat. The Republic made a long crossing from 9-mile point. After reaching the left bank she kept from it, I suppose, 200 yards, more or less. The Cleona was keeping up
52 the left bank much closer than the Republic—probably 100 yards closer. When we straightened up the left bank, I suppose the Cleona was half a mile ahead of us.

Although I am a practicable steamboatman—standing my watch since 1853—I will state that not anticipating a collision I do not pretend to give the exact distance, but only approximately. I noticed when the Cleona first left the left bank to cross over; I suppose she was then from 300 to 500 yards ahead of us. The Cleona attempted to make a short crossing.

She did not blow any whistle when she first started to cross the river. I suppose we were 50 to 100 yards from the Cleona when she blew two whistles; they were given for a signal; two distinct blowings. The Republic, attempting to pass the Cleona on her larboard side, changed her course for that purpose. Had not the Republic changed her course there would have been no collision. I suppose the collision was produced by the Republic changing her course. The boats were about the middle of the river at the time of the collision. Do not know how wide the river is there, but I suppose about half a mile—a little wider than in front of this city—probably a little wider. There was when the collision occurred abundance of room on the starboard of the Cleona for the Republic to pass. There was room for the Republic to pass on that side (the starboard,) that is, at the time of the collision, if the Republic had kept her course as the Cleona was in the middle of the river, and it is not usual to navigate the middle of the river in going up stream.

Was not standing alongside of Mr. Fulkerson at time of collision; was a little before; was in conversation with him; Mr. Fulkerson re-
53 marked to me, when the Republic was about 100 yards from the Cleona, that if his partner, Mr. Kribben, did not stop the Republic she would be into the Cleona. I could not say whether the Republic stopped then. Do not know whether her wheels were stopped at all before the blow. Did not hear the engine-bells ring.

I don't suppose that the Republic's headway could be stopped within 100 to 150 yards, going up stream. Do not know whether she could be stopped within that distance.

Was pilot part of two years on the Lee, and have stopped her sometimes probably within that distance. The Lee is faster than the Republic.

On the evening of the collision I suppose the Republic was running about 10 to 12 miles an hour; I judge about 10 miles an hour.

The Republic gave no signal. Properly it was her duty to give the first signal, stating which side she would take, as she was gaining on the Cleona.

Sometimes we don't blow a signal until we lap the boat, and sometimes we blow it within a hundred yards from the boat. The law requires that we give the same signal in passing a boat as we do in meeting it. Sometimes we pass without giving any signal. There is no particular distance for blowing a signal. This very morning I passed a boat and blew a whistle at 200 yards; perhaps the next time I wouldn't blow a signal. Sometimes, in passing a slow boat, we blow a whistle within 100 to 20 yards. When two boats are of the same speed, or nearly the same speed, we blow when we get near to it—when we lap her. The Cleona is regarded as a slow boat, and the Republic
54 as a pretty fast one. The Cleona is a small stern-wheel boat; don't know her tonnage. Do not know what her speed was on the night of the collision, but I know she was going as fast as she could go. Do not think the Republic could approach the left shore within 50 yards. I suppose she could approach the bank with safety within 150 to 200 yards.

It was not dark yet, at time of collision; just twilight; could not say positively that objects could be seen distinctly on either shore. I could see the pilot of the Cleona in the pilot-house just previous to the collision. The collision occurred under the 12-mile point. I didn't consider it a very violent—a very severe lick. I thought it would turn the Cleona over, as she swung around. Struck the Cleona on the fantail and in the wheel at the same time, on the larboard side.

Being shown Diagrams A and O, says: I think Diagram A is the best plan of the river, and think the track of the two boats are well described, and better than I could have done it myself. I have stated all I possibly could about the whistles; all that did occur. The position of the two boats at the time of collision, I think, is correctly represented on Diagram A. Had the Republic kept the usual course of navigation up the left bank, she would have gone 3 miles to the head of 12-mile point, where she would have started to cross to 18-mile point.

I have never spoken to the owner of the Cleona; don't know him; wouldn't know him if he were in this room; and never spoken to any one connected with the Cleona on the subject of this collision; and never saw his counsel until the moment of giving my deposition in this case.

55 Cross-examination:

The usual crossing for boats running up the river is about 3 miles above the place of collision. I think it was prudent for the Cleona to have attempted to cross the river where she did if she had business over there. The Cleona was probably 50 yards from the left bank when she started to cross. My attention was called to the Cleona by Mr. Fulkerson; I saw her just when she swung around to cross. Mr. Fulkerson remarked to me, what that fellow was going to do. I replied that I supposed she was going over the river to land. At that time I don't think the Republic could have passed between her and the shore. Under the circumstances it was the Republic's right or duty to give the signal.

Question. Two boats ascending the river, pursuing courses in which there is no danger of a collision, what course should the two boats pursue until the boat having the right to give the signal should give the signal?

Answer. Keep on their courses.

It is not often the case, but it does happen sometimes, and I think it has happened to me since this collision, that two boats ascending, the head boat being close in shore, where it is impossible to pass between her and the shore, to pass her on the outside without giving a signal. It was my duty to have reported the pilot of the boat I met this morning for not giving a signal, but I did not do it.

Question. Suppose the pilot at the wheel of the Great Republic, observing the Cleona running out from shore, and thinking she had sheered, had put the head of his boat to the left to avoid the Cleona, and the Republic had begun to swing to the left when he first discovered that
56 the Cleona was crossing the river, would it not have made a collision imminent if he had attempted to right the Republic and pass to the starboard of the Cleona?

(Objected to on the ground that it contains too many suppositions on matters of opinion.)

Answer. That's a question that I really cannot answer, but if I had been at the wheel of the Republic I could.

Those on the Cleona did see the head of the Republic falling off. Had I been on board the Cleona when I saw the Republic fall off, I would have blown my whistle to land. The whistle to land is three whistles. One or two whistles is a signal—three or more is to land.

B. F. LITTRELL.

Sworn to and subscribed before me this 22d day of November, 1869.

K. LOEW, *U. S. Com.*

H. L. SWORDS, sworn for libellant, says:

I was passenger on the Cleona at the occasion of her collision with the

Great Republic. After tea I took my seat at the boiler-deck; we were then above Carrollton, near 9-mile point, where the Cleona was crossing to make a landing. Capt. King was sitting with me on the right-hand side of the stairs leading up to the boiler-deck, having my feet against the rail around the guard. We were sitting there some 15 or 20 minutes talking together, when our attention was called to several passengers on the larboard side of the boat, all looking very intently to the rear with their bodies leaning over the guards. Capt. King and myself instantly arose and went to the same place; the moment I got there the Cleona's whistles sounded,
57 and I started to lean over, and a second whistle sounded, one right after the other; I leaned over and saw the Great Republic, perhaps a square's length from the Cleona. She was coming head on and as if she would strike us amidship, if she did not alter her course; from what I saw a collision was inevitable; it looked to me as if the Great Republic was from the beginning bent upon our destruction.

I looked at the Republic a minute or two and started toward the cabin, and just got in when I was thrown down by the shock against the side of the cabin.

I have little experience in seafaring, and know little about the river, though I have been on the Mississippi half a dozen times.

At the time of the collision the Cleona was about the middle of the river, running from the shore some 10 to 15 minutes; not running very fast at the time. Upon being shown both diagrams, he says: After leaving 9-mile point the Cleona took an oblique course to the other side of the river, towards the line marked B, and we run along that bank for some short distance, and were about to make a landing on the line O on the other side. After we left the side B we were running for about 15 minutes before the collision occurred. The collision was a violent one; a good many of us were knocked down. When I looked over the side of the Cleona and saw the Republic approaching I could not see the wheels moving, but I saw the water about the wheels agitated; don't know that the agitated water was before or behind the wheel; I could see only the wheel-house of the Republic, and not her wheels. When I first looked over the Cleona I exclaimed that if the Republic would con-
continue her course she would cut us in two. The Republic was
58 approaching fast when she came in; did not see her stop at all; when she first struck us I felt the motion as if she was lifting us.

The Cleona remained careened over for a minute or a minute and a half, I think; one of the officers of the Republic refused to land me or any one from the Cleona at Donaldsonville. I learned afterwards that it was Capt. Van Hook who so refused. His answer was I cannot land you at Donaldsonville. I do not know that it was Capt. Van Hook. When I went on the Republic I went right to the office and asked to be landed at Donaldsonville, and was told it could not be done.

I remarked to the person that it was very strange that the application was refused. I then went back to the Cleona, which was towed ashore. I remained there until the Welcome arrived, which brought me home to Donaldsonville.

I learned afterwards, that same night, upon coming back on the Cleona, that the cause of the collision was drunkenness on the part of the pilot, whose name was supposed to be Gibbs. This I learned from the officers and passengers of the Cleona.

(Counsel for claimant objects to the last answer as hearsay, and not admissible.)

Cross-examination:

I reached the larboard side of the Cleona just about the time she

sounded her whistles; one whistle followed the other as quick as could be done.

I had not observed the Republic after leaving Carrollton until I got over to the larboard side of the Cleona, as already stated; she was only a short distance—about one square from the Cleona.

59 When I say in my examination-in-chief that it looked to me as if the Great Republic was from the beginning bent on our destruction; I mean from the beginning, after I had come to the larboard side of the Cleona, which is the first time I observed her after leaving Carrollton.

We were very near the middle of the river when we blew the whistles; I know nothing of the course of Republic anterior to the blowing of the whistles. I remained at the larboard side looking over towards the Republic some two or three minutes.

Re-examination:

I am editor of a newspaper, the Assumption Advocate.

H. L. SWORDS.

Sworn to and subscribed before me this 27th December, 1869.

K. LOEW.
U. S. Commissioner.

Testimony for libellant.

J. L. HARRIS, being duly sworn, says:

Was a passenger on the Great Republic on the evening of the 28th August, 1870; was sitting down on the boiler-deck forward of the cabin, ten or fifteen minutes before the collision, with a friend; the first my attention was called to the Cleona, was my friend, Mr. DeHarman remarking that we would have a collision. I remarked that it was not necessarily that it would be—that the Cleona was on the starboard side; think that it could be avoided.

Shortly after my remark I noticed that the little boat was mak-
60 ing a crossing, and she blowing her whistle, which was a signal for the side that she wanted, as I understood it; the other boat not responding, I remarked to Mr. DeArmon that there would be unless the pilot of the Great Republic stop the boat.

Shortly after this remark the collision occurred; was excited, and never heard for the bell to stop the Republic; my impression was that she was not stopped; had been looking for the boat to stop, or a bell to stop her, but did not hear it; am not a very excitable man; have been in command of a boat, but owing to the confusion incident to an imminent collision, I was somewhat excited; clerked on the Mississippi river two years; commanded four on the lake, and commanded a short time again on the Mississippi river; have quit steamboating since 1857; but commanded a steamboat during the war; am now a commission merchant in this city; don't know the captains or clerks of either the Cleona or Republic.

From my knowedge in steamboat matters, I think this collision could have been avoided; if the Great Republic had stopped her engines in time, of course it could have been avoided; I should judge that the Cleona was about 150 yards from the Republic when my attention was first called to her; I did not hear anybody call on the captain of the Republic to stop her.

J. L. HARRIS.

Sworn to and subscribed before me this 17th March, 1870.

K. LOEW,
U. S. Commissioner.

61 *Testimony for claimant.*

E. L. FULKERSON, being duly sworn, says:

Am a pilot by occupation, and have been one for 14 or 15 years; am now pilot on the steamer Stonewall; was a pilot on the steamer Great Republic on the 28th of August last; Mr. Kribben was the other pilot, and was the one on watch when we left the city on that day, between five and six o'clock, p. m., I judge, as I had no watch; we landed at Carrollton where we put out the excursionists, and from that point we started on our voyage up the river to our destination, the city of St. Louis.

The Great Republic tonnage is 2,200 tons she is very heavy and very fast; we had many passengers on board; when we left Carrollton, the Cleona was just turning the 9-mile point, as shown on Diagram O, now filed; when we reached the 9-mile point and turned it, the Cleona had reached the left bank of the river. All the while after I left Carrollton until the collision I was sitting on the boiler-deck in conversation with Mr. Littrell, who is a pilot on the river, and was a passenger on the Republic. The line marked C C represents, as well as I could judge, the course of the Cleona. The red line D D represents the course of the steamer Republic from the time she left Carrollton to the time the Cleona blew her first whistle, which is designated by the letter X on the diagram. The Cleona blew two whistles in succession, with an interval of three seconds between each, or barely a space of time; the Cleona was then at point marked P on the diagram; the Cleona has been running very close the left bank; she was running the shore very close, and
62 all of a sudden darted a short distance, and then straightened up apparently a little her course, when all of a sudden appeared to pull to the right bank of the river; it was a very sudden turn to make; the whistles of the Cleona were made as she made this sudden turn; we were not more than 50 yards from the Cleona when she blew her whistles—I mean that we were outside of her in the current about 100 yards, and about 50 yards below her in the current.

Question. What was your understanding of these blasts of the Cleona?

(Objected to as irrelevant, the witness being called upon to state what he knows, and not what he thought or understood about anything, especially as it does not appear that the witness had the control of either boat.)

Answer. These blasts, according to the regulations, would call on him to continue on the left shore; on the contrary, he was going to the right bank. I had been closely observing the Cleona prior to this; there was nothing in her course to indicate that she was going to change it until I saw her throw herself out to go across the river.

Question. In what direction was the Cleona going previous to her changing her course?

Answer. She seemed to be running very close the left bank going up the river.

When the Cleona changed her course I observed that the Republic pulled to the larboard, which would have carried her or opened the distance between the two boats. The Republic was swinging to the larboard when she came in contact with the Cleona. She had been making 12 miles an hour when the collision occurred. She had been stopped
63 and was backing her engine some time pre-[collision.]viously, but she is such a heavy steamer that we cannot stop her 30 or 40 yards. We struck the Cleona on the larboard fantail between the wheel and the hull.

The lines from X and P in the diagram indicate the courses of the two steamers up to the moment of the

The head of the Cleona at time of collision was quartering up a little almost square across the river. The Great Republic was running over 200 yards from the left shore prior to her pulling to larboard, as described above. Had the Cleona continued her course up the left bank there would have been no collision, and both keeping in their course, it would have taken the Republic between 3 and 5 minutes to pass the Cleona.

Question. What is the usual signal given when a boat intends to cross another's bows?

(Objected to—the best evidence of the fact being the regulations in print on the subject.)

Answer. In the first place the law says explicitly that no boat shall cross the bows of another boat; but, if you wish to cross, you will designate it by three or four whistles to let the pilot astern know of your intentions, and then give the signal as in meeting.

(Objected to—the best evidence about what the law is being the law itself.)

Question. As a pilot, when the Great Republic was at point X and the Cleona at the point P, starting out across the river, could the Great Republic have safely passed to the right of the Cleona?

Answer. It would have been folly for a man to attempt to pass between the Cleona and the left bank, when there was three-quarters of a mile open river to the left, with a heavy boat like the Great Republic.

64 Diagram A represents the course of the two boats, but not so correctly as Diagram O.

The collision occurred near the middle of the river. The Great Republic had been pulling to the larboard between one and two minutes when the collision occurred. I could not tell exactly, as I had no watch.

The Great Republic struck the Cleona only once that I know of. I saw the pilot of the Cleona leave the pilot-house, come back astern on the roof, and by some process got over on our boat. Not being acquainted with the pilot, only knew he was the pilot by the demonstrations he was making. He left the pilot-house about the moment of the collision. After the collision we rendered the Cleona all the assistance we could, and towed her to the bank. I have known Kribben as a pilot for 12 or 13 years.

Being asked what is his reputation as a pilot—

(The proctor for libellant objects to the question as irrelevant—that his reputation will not undo the fact of the collision.)

Witness answers: Kribben stands as a number one pilot, and, as an evidence, I have known him to keep his situation as pilot for three years on the same boat.

The Cleona started to cross the river between a quarter and a half mile from the extreme point of 12-mile point.

Cross-examination:

The Great Republic is 2200 tons burden. I would say her speed on night of the collision was 12 miles an hour. Was sitting on the boiler-deck forward on that evening. I saw both boats, both shores, and took notice of the track from 9-mile point to the time of collision. I was engaged in conversation with Mr. Littrell, some of it relating to

65 small boats. It did not have reference to the two boats and their track until near the time of the collision, about 150 yards from where the Cleona started out to cross the river.

When the Great Republic turned 9-mile point the Cleona was across the river going up the left bank; don't know how long she had been on

that track at that time; it could have been but a few minutes. She was usually close to the left bank; I would say a width of herself. I could see this distinctly from my position on the Republic. I would say we were 8 or 900 yards from the Cleona at that time.

It seems to me the river is three-quarters of a mile at that place. I would say the river is half a mile at the foot of Canal street.

The Cleona ought to have run the left shore (on a regular voyage) 5 or 6 miles before crossing the river. The river is nearly three-quarters of a mile wide where the collision occurred.

The Cleona was between 40 or 50 yards from the Great Republic when she blew her whistles.

Don't know who were the pilots of the Cleona. I saw one man in the pilot-house at time of collision; cannot say that I saw another one. There was no one remaining in the pilot-house that I have seen.

The collision was not very violent. The Cleona was very much careened, from the fact of her being so much across the current. She remained careened over about 2 seconds. The Great Republic was clear of her in two seconds after the blow. She got clear of her by backing.

66 The Republic can't back in two seconds; but she knocked the Cleona out of her way in two seconds. The Republic was headed up and the Cleona down the river for five minutes.

Question. Was it before or after the Cleona was careened over, or at the time she was careened over, that you saw the pilot coming out of the pilot-house?

Answer. About the time of the collision, a little before she careened. The Cleona careened immediately after she was struck. It was a second after she was struck that she careened; it was a lick and a careen; that's all I can say.

Question. Did the pilot of the Cleona come out of the pilot-house in this second between the blow and the careening?

Answer. I could not say whether the boat was careened or not when he left the pilot-house. All I know is, that he left the pilot-house, and the next thing he was on the Great Republic.

Question. Did you not observe him leave the pilot-house of the Cleona after the collision, after the Republic had backed clear of the Cleona, after his boat had righted, to examine his wheels and the damage done to it by the collision?

Answer. I observed him leave the pilot-house of the Cleona about the time of the collision; it was before the Republic got clear of her, from the fact of his getting over to our vessel, which he could not have done had we not got clear of the Cleona. The excitement was so great at the time, and steam escaping, that I don't think any man had presence of mind to examine the damage.

Same question as above being propounded to witness, he answers:

67 No. I saw him leave about the time the two boats collided, which would not occupy the space that we were together of two seconds, and the next place I saw him was aboard the Republic. I saw him on board the Great Republic but once, where he remained between 3 and 5 minutes.

Question. Did he come on board when the Republic first struck, or did he come over when the Republic came alongside of her a second time?

Answer. He came on board at the time of the collision, as I saw no other opportunity for him to get aboard. I did not see him come on board.

Question. Do you know when and how he came on board from your own personal knowledge?

Answer. I do not know positively, but some one jumped on the forecastle of the Great Republic. I could not say positively that it was the pilot. I saw somebody jumped from the hurricane-roof of the Cleona to the forecastle of the Republic. Cannot say that I saw him before or afterwards, unless it was the pilot that I saw on board the Great Republic. Don't know whether the man who jumped from the Cleona on the Great Republic was black or white. I did not see any one knocked in the river from the Cleona, but saw a man in the river; saw only one man; he was saved. Did not see the Great Republic stop her engines, but heard the stopping-bell ring. Cannot give the time between the ringing of the stopping-bell and collision.

Question. Can the stopping-bell of the Republic while under way, her machinery all going, be heard by a person on the forward part of the boiler-deck?

68 Answer. It can if there is no wind. There was no wind on this occasion. The velocity of the boat on her way will create breeze, but no wind. Cannot say how far the stopping-bells of the Republic were from the place where I was sitting. They were down-stairs, and I was up-stairs on the boiler-deck. The bells are in the engine-room. Am not related to Mr. Kribben; was merely his partner in piloting.

Question. Did you not remark to Mr. Littrell just previous to the collision that if the Great Republic did not stop she would run down the Cleona?

Answer. No, sir. I remarked to Mr. Littrell that my partner had better stopped her, or that fellow (the Cleona) would be into him.

Question. Did you not remark to Mr. Littrell, when the Cleona first left the left-hand shore, and say to him, "What is that boat going to do?" to which he replied, "She is going to make a landing in the bend on the opposite shore;" and was she not from 400 to 600 yards ahead of you at that time?

Answer. I did make the observation to Mr. Littrell, "What is that boat going to do?" He replied, "I believe she has run off from the shore." We were about 200 yards from her at that time.

I testified before the local board of inspectors in St. Louis and New Orleans. It was reduced to writing.

The boats were near the middle of the river at time of collision.

E. L. FULKERSON.

Sworn to and subscribed before me this 13th day of October, 1869.

K. LOEW, *U. S. Com.*

69 *Testimony for claimant.*

W'M J. KRIBBEN, being duly sworn, says:

Am forty-four years of age, and a pilot since 1850, in the trade between St. Louis, Omaha, Missouri, and New Orleans.

Was the pilot at the wheel of the steamer Great Republic on the night of 28th of August, 1869, when the collision between the Great Republic and Cleona occurred. Left New Orleans on that day between 5 and 6 p. m.

When we started to cross the river above 9-mile point the Cleona was on the left bank, running up that left bank, and, as near as I can tell, forty or fifty yards from that shore. The Great Republic was making a short crossing; going from 350 to 400 yards from the left bank and straightened up; when I straightened up, this carried the boat about

that track at that time; it could have been but a few minutes. She was usually close to the left bank; I would say a width of herself. I could see this distinctly from my position on the Republic. I would say we were 8 or 900 yards from the Cleona at that time.

It seems to me the river is three-quarters of a mile at that place. I would say the river is half a mile at the foot of Canal street.

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Answer. He came on board at the time of the collision, as I saw no other opportunity for him to get aboard. I did not see him come on board.

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Question. Did you not remark to Mr. Littrell, when the Cleona first left the left-hand shore, and say to him, "What is that boat going to do?" to which he replied, "She is going to make a landing in the bend on the opposite shore;" and was she not from 400 to 600 yards ahead of you at that time?

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When we started to cross the river above 9-mile point the Cleona was on the left bank, running up that left bank, and, as near as I can tell, forty or fifty yards from that shore. The Great Republic was making a short crossing; going from 350 to 400 yards from the left bank and straightened up; when I straightened up, this carried the boat about

300 yards to the larboard of 12-mile point; it was about one and half mile before I changed my course to the larboard.

Being shown the two diagrams marked, respectively, A and O, says: I don't think either one is exactly correct.

The marks on Diagram O in blue pencil indicate the track of the Great Republic, and the reason I deviated from 9-mile point is, that no man living could have gone so close the point at the stage of the water then with a boat of the size of the Republic; this is my opinion.

The round red dot indicates a mud lump; boats can go either side of it; I took the inside track; it is distant from the shore between 300 and 400 yards; perhaps more; at that time it was covered with probably 12 feet of water. The (2) blue dots represents, the upper one, the position of the Cleona when she started off from shore, and the lower one
70 the position of the Republic at the time the Cleona started off, and are marked respectively M and N. From the points M and N the blue lines indicate the track of the boats until the moment of collision. R in red ink represents the Republic, and C in red ink represents the Cleona.

I put the stern of the Great Republic down stream, as it is in the diagram, from the fact that the boat's headway being checked will naturally straighten up with the current.

When I arrived at the point M I saw the Cleona sheer to the larboard. I was below her in the current about 250 to 300 yards, and to the larboard of her about the same distance. She gave no signal when she started to the larboard; I pulled to the larboard as soon as I saw her sheer to the larboard, thinking at the time that she was running off from the shore. The Cleona continued on that course and gave no signal at that time; she did give us a signal, consisting of two blasts of her steam-whistle, which were given just as fast as a man can blow them on a steamboat. She had been running out about half a minute when she gave the signal, and still continued on her course out.

Immediately after the Cleona sheered to the larboard, I pulled my boat to the larboard, and rang both stopping-bells, and then rang the backing-bells to back her.

I then halloed to Mr. Davitt, the second clerk, who was in the pilot-house at the time, to halloe down through the trumpet on the larboard, while I halloed through the starboard trumpet to the engineer to back the boat hard.

The engineer on the starboard side halloed to me that she was backing as hard as she can.

71 That part of the foregoing testimony relating to the answer of the engineer objected to by proctor for libellant as hearsay.

I was swinging as fast as I could to the larboard when the signal of the Cleona was given. She had all her helm to the starboard. I could not say how long the Great Republic had been backing when she struck the Cleona. The Great Republic is a low-pressure boat, and it is impossible for the pilot to tell when she is backing until he feels the vibration of the wheels. It was, I suppose, about half a minute from the time the backing-bells were rang until the collision occurred.

From the vibration of the boat, I was satisfied that she was backing before we struck the Cleona.

There was no room to pass between the Cleona and bank of the river before she began to sheer.

Question. After the Cleona had commenced to go out from shore, why did you not put your helm to the larboard, and thus pass between her and the shore?

Answer. In all probability I would have cut her in two; and besides, had I not struck her, I would have run into the shore and damaged the Republic. It was an impossibility, after the Republic had swung to the larboard, to have swung to the starboard of the Cleona. This is my opinion; hence I continued to pull to the larboard to avoid the collision if possible. It must have been near 7 o'clock when the collision occurred; it was not dark; about twilight; I could see objects on both shores. I don't think it could have been more than two or three seconds after the Cleona blew her signal that she was struck; a man could count one, two, three, and four. The Republic did not strike the Cleona with any great force; struck her only once that I know of.

72 Cross-examination:

We were in sight of the Cleona from the time we left port until we struck her. She was about 3 or 4 miles ahead of us when we backed out from the wharf here. She was this side the Stock Landing. We did not pass her at any time; we got opposite to her, and probably a little ahead of her, opposite Carrollton, she being on the right and the Republic on the left bank. We landed at Carrollton, and remained there about 10 or 15 minutes—maybe 25 minutes; I could not state exactly; took no account of the time. I then crossed over to 9-mile point, and after rounding that point, the Cleona was then going up on the left bank. We did not make the same crossing as the Cleona; we made a longer crossing. All boats generally cross at the same point; some make the crossing longer or shorter, according to the size of the boat. Large boats sometime make short crossings; it depends upon circumstances. The Cleona was about 1½ mile ahead of us, perhaps a little more, on the same bank. The reach on the left bank, where boats generally straightened up after crossing to 12-mile point, is not 3 miles. The Cleona was keeping up that bank about 40 or 50 yards. The Republic must have kept up about 300 yards. I was from 250 to 300 yards from the Cleona at the time of the Cleona starting from the shore under 12-mile point, where she was at the time. The Cleona was from 250 to 300 yards ahead of us. I was not in her wake; was about 250 to 300 yards outside of her to the larboard. When the Cleona blew two whistles in succession, I think we were from 40 to 50 feet from her.

73 I was then quartering across the river; the Cleona was square across the river when she blew her whistles, and the head of the Republic was bearing with her.

Question. If you had kept your course from the time you first saw the Cleona leave the left bank of the river for the opposite one, would not the collision have been avoided?

Answer. It would not; to the contrary; I could not state exactly; but as near as I can judge the collision occurred just in the middle of the river. I would not pronounce one shore any closer than the other.

Have no idea of the width of the river there; it may be three-quarters of a mile wide; it may be a mile; I cannot tell; never measured it; I don't think there is much difference between the river there and at the foot of Canal street; it may be a little wider there.

Cannot say how many yards it is from the shore to the place where the collision occurred; it may have been 800 yards. Don't recollect how many yards there are in a mile.

It was almost immediately after seeing the Cleona start out from the shore that I rang the stopping-bells, and it could not have been over half a minute after I rang the backing-bells that the collision occurred. I did not give any signal when I was approaching the Cleona, because

the law does not specify any distance for giving the signal in passing boats, and I did not think that I was within signal distance, from the fact that I was so far outside of her; did not think it necessary. It is the duty of the pilot overtaking another boat, if he intends to pass her, to give a signal of one or two whistles, as the case may be, to indicate the side he intends to take. The Great Republic is a large steam-
74 boat—one of the largest on the river—about 2220 tons burthen; she runs very well; she is a fast boat; she is engaged in carrying freight and passengers between this port and St. Louis; was so engaged at the time I was on her.

On the evening of the collision the Great Republic was running at the rate of 12 miles an hour, about, as near as I could tell. The Cleona is a small stern-wheel boat, and running something about 7 or 7½ miles an hour that night.

I think the Republic was drawing 7 or 7½ feet water on that day.

I don't think the water is deep on the left shore, from the fact that I am not in the habit of running that shore close. There may be 20 feet for ought I know—know nothing of it. Where the collision occurred I don't know what's the depth of the water. There is a shoal bar immediately below 12-mile point, and the collision occurred below the bar. Don't know how close a boat could approach that bar. At the time of collision the water was in good boating stage—the water was neither high nor low.

I never run the Republic when I was on her more than 300 to 350 yards from 12-mile point.

The Great Republic is just like the R. E. Lee—you would not hold her within 40 or 50 yards from the shore if the water be 40 feet deep; in three fathoms water she is unmanageable.

At the place of the collision there was plenty of water on either side of the Cleona; I could have passed her on either side so far as water was concerned.

The Republic struck the Cleona on her larboard side near the
75 fantail. I sometimes drink spirituous liquors. I took none for six hours before the Great Republic left port that day. Could not say how many drinks I took; did not keep any account of them.

Redirect examination:

I was not under the influence of liquor on that night. There was a full complement of officers and crew on the Great Republic on that night.

I am no draughtman. I could see the Cleona on the river from the time we backed out here to the time of the collision.

I thought the Cleona was handled very carelessly and unskilfully even here at the wharf. The Henry Ames backed out immediately below the Great Republic, and about the time that she straightened up in the current the Cleona came up inside of her (the Henry Ames) and attempted to pass her, and she had to stop her wheel to prevent her to run under the Henry Ames.

All testimony relating to the Henry Ames is objected to on the ground that, instead of showing want of skill, it showed that there was skill, from the fact that an unavoidable collision was avoided by the skilfull management of the Cleona.

The Cleona ought to have been on the outside of the Henry Ames. I consider that it was not skilfull handling and prudence to have attempted to pass between the Henry Ames and the wharf. I consider it sheer recklessness. It was a dangerous thing to have attempted it.

All the foregoing testimony objected to on the grounds above given.

I did intend to give a signal to the Cleona. The approaching
76 boat has the right to give the signal. I would have given the signal to let her know that I wished to go to the larboard of her; and the only reason that I did not give it was that in my judgment I did not think I was within signal distance.

Mr. Jas. Wilkins was the engineer on watch at the time of collision.

Recross-examination:

I don't think there was room between the Henry Ames and the other boats for the Cleona to pass with safety. The Cleona stopped her wheel and waited until the Henry Ames went ahead. The Henry Ames is not a very large boat. She is a middle-sized boat. She would not run 12 miles an hour. She would run about 10 miles an hour. I don't think the Cleona could have passed the Ames by going outside of her.

Question. Was it not better for the Cleona to wait as she did, by stopping her wheel until the Ames went on, than to have endeavored to go outside of the Ames?

Answer. I think not. The outside would have been the proper place. The outside would be in the current and the inside in the eddy. The Cleona was very near the head of the eddy. It was not necessary for her to come back into the eddy again. She would have come in closer to the shipping, however, to come into the slack current. This would be above the eddy, though. The eddy extends as far as Julia street, I think, near the Morgan Line Steamers landing.

The Ames backed out between Gravier and Common. There was no collision then. I witnessed the occurrence. Never been employed
77 on a small boat like the Cleona on the lower trade. I should judge the Cleona to be 100 and odd tons burden.

The Republic has one captain, one mate, second mate, watchman, two pilots, first and second engineer, four assistant engineers, carpenter, three clerks, four deck hands, and as many as thirty to forty roost about, first and second steward, and from twenty to thirty cabin and cook-house crew.

So far as the cabin crew was concerned, and the roost about and deck hands, I do not know of my own personal knowledge of the number on board; as to the officers, I do know it personally.

Question. What do you consider a signal distance for a boat approaching and about to pass another going in the same direction?

Answer. It depends on circumstances.

There is a difference between day and night. If I was approaching a boat and about to pass it at night, I'll give a signal at 5, 6, or 700 yards. In day-time and a good piece of river having ample room, I might approach her within 50 feet before I give the signal, and consider it perfectly safe.

Redirect examination resumed:

I mean by 50 feet that much lower down in the current; I do not mean within 50 feet measurement. Have been on small boats on the upper trade.

WM J. KRIBBEN.

Sworn to and subscribed before me this 22d Oct., 1869.

K. LOEW,
U. S. Commissioner.

78 JOHN MCCLOUD, sworn for claimants, deposes and says:

Was on the steamer Great Republic at the time of the collision with the Cleona, as assistant clerk.

I was standing right forward, and looking out at the Cleona, she running up the right-hand shore going up, and all at once she started right square across the river, and we being so close behind her, it was impossible for us to miss her. We were coming up at a rate of ten or twelve, or perhaps thirteen, miles an hour, when the Cleona started out to cross; I think the Cleona was about 20 yards from the shore when she started to cross I didn't pay much attention to the distance that she was from the shore When the two boats came together they were two or three hundred yards from the shore. As she left the shore our pilot kept sheering off to the larboard, and backing at the same time, in hopes that he could avoid her. This was the only course that the pilot of the Republic could take—he couldn't go to shore because it was too shallow for the safety of the Republic to go there. I should judge the Cleona was about 300 yards from the Great Republic when she started to cross. The distance is very deceiving on water.

Question. When you saw the Cleona turn across the river did you suppose she was going to make a crossing, or did you think she had sheered from the shore?

(Objected to by the proctor for libellant on the ground that the witness's suppositions are not evidence.)

Answer. I judged, as she was running in shallow water, that she had started for deep water or ran away with the pilot.

Question. Was it prudent for the Cleona to cross the bow of the Republic in that manner.

79 (Objected to by proctor for libellant on the ground that is a leading question, and, witness not being a pilot nor versed in the navigation of steamboats, he is not a competent judge of what would or would not be prudent in the management of the boat.)

Answer. No, sir.

Question. What made you suppose that the Cleona had sheered or run away with the pilot?

(Objected to on the ground that his thoughts are not evidence.)

Answer. My reasons for supposing that she had sheered or ran away with the pilot are: because, in a case of a boat running along in shoal water, she will naturally dart off for deep water.

The Great Republic was 30 yards further out the river than the Cleona. The Republic was drawing 8 or 9 feet, and the other 3 or 3½ feet. I am just guessing at the draught of the Cleona.

All of witness' guessings are objected to by proctor for libellant, as they are not evidence—proofs ought to go to facts, not guesses.

Where the Cleona started to cross the river was not an ordinary crossing for an ascending boat.

When a boat ascending the river turns suddenly, she turns on her centre, and still she goes ahead.

Have been steamboating twenty-five years. Never served in any other capacity than clerk. During the war I steered a boat and acted as clerk at the same time. Am familiar with the movements and navigation of steamboats.

Cross-examination:

80 Was standing forward of the cabin, near the bell-rope, at the time of the collision; had been standing there for about 20 minutes previous to the collision. The Great Republic was running the right-hand shore, going up at that time.

When I first came out there and saw the Cleona, I suppose she was about half a mile from us. Both boats were then going up the river in the same course.

Can't tell how far the Republic was from the shore when I first came out. Both boats were a good distance from it. Afterwards they came nearer it, as the water grew deeper. When I first saw the Cleona the Republic was 20 or 30 yards to the left of her, and continued about that distance until the Cleona sheered.

I don't know that the Cleona sheered; nobody could tell. I watched the Cleona particularly when she first started from the left shore, as I knew we were bound to hit her. As soon as the Cleona started from the shore the pilot of the Great Republic commenced gradually pulling to the left. I did not see the engines of the Republic stopped. I heard the bells ring to stop her, and then to back her.

There is a difference in the bells to stop and the bells to back. I heard both. I should think I was about ⅓ the length of the boat from the bells. Between me and the bells there were the floor and cabin. Anybody that was on the boiler-deck could hear them.

I think Mr. Littrell was on the boiler-deck; saw him there a moment after the collision. Don't know if he was there at the moment the boats struck, nor before. Mr. Littrell is a pilot, and a good one.

Our bells to stop the engines of the Great Republic were rung just as quick as the Cleona sheered off.

The Republic was two to three hundred yards from the Cleona when the latter started to cross the river.

81 Did not see the wheels of the Republic stopped or backed—no one could see them from where I was.

I know the Republic was backing, because her headway was stopped. Had she been going at full speed she would have gone right through the Cleona and cut her in two. I should judge that the Cleona was struck eight or ten feet forward of her wheel, just where the engine is set; I should judge so, because I didn't see her struck, for as soon as I saw she was going to be struck I ran back aft. I suppose the Great Republic was about 6 or 8 feet from the Cleona when I ran back aft. I ran back aft because I was afraid our jack-staff might fall on me or something might hit me.

I should judge the collision occurred very near the middle of the river; was very much excited, and didn't pay much attention to it. I suppose the Cleona was struck somewhere near the engine in the hull. I should judge the river is about half a mile wide at that place; might be more, might be less. Don't know what depth of water the Cleona was running in previous of her running out from the shore. Don't know what's the depth of water on that shore.

Am now on the Grand Era; have been steamboating steady since 1848. Kribben was at the wheel of the Republic at the time of the collision; he is a pilot. Both pilots are hired at the same price, as far as I know; don't know what price they were hired at; don't know that they were hired at the same price; never looked in the books to see what they got.

Don't know whether Kribben was under the influence of liquor at the time of the collision; did not see him drink any.

82 Question. Was there not considerable indignation among the passengers of the Republic against her pilots or other officers on her on account of this collision?

Answer. No, sir; I didn't hear any say a word.

The captain of the Republic did not refuse to take the passengers of the Cleona after the collision; on the contrary, he took all those that wanted to come on board, and landed them at their landing; and, besides, he towed the Cleona to the shore and landed her. The Cleona did

not hail him to do that; he went of his own accord. He took the Cleona to the bank just as soon as he could back the Republic, round to, and come alongside of the Cleona. The collision was rather a hard shock.

Can't say how far the Republic went ahead of the Cleona after the collision. Her headway was pretty much stopped, and she could not have gone far. This is a supposition, (and the supposition is objected to accordingly.)

The blow we struck the Cleona was a glancing blow, and her stern swung out in the river, and her head came right alongside of the Republic.

When one boat intends to pass another running in the same direction, the usual distance for blowing a whistle is 100 yards. This signal is to be given by the boat about to pass the other. The Republic did not give that signal on this occasion. It would have been the duty of the Republic to give that signal had she wanted to pass the Cleona. I knew that the Republic was going to pass the Cleona before she went far when I first saw her; she was then half a mile ahead of us.

I knew that because we were running at a rate of nearly double her speed.

83 The object of the signal described above is to indicate, if you blow two whistles, to take the larboard, and one whistle, the starboard. The boat ahead has the choice of the side; this is the way that I have always understood it; but the signal is to be given by the hind boat.

There was one person knocked overboard by the collision, and we picked him up in our yawl. It was reported that there were two or three; don't know what become of the others, if any.

I think the Republic is 335 feet long—never looked at her custom-house papers; I know she carries 2000 tons.

Can't say what distance the Great Republic could be stopped running up stream; never saw it tried on any boat.

Re-examination:

I left the Great Republic about four months ago; I think on her second trip after the collision; either the first or second trip. There is a pilot association in St. Louis. The pilots members of that association and those not belonging to that association do not seem friendly; they do talk that way. I don't think Kribben was a member of that association at the time of the collision.

(Last answer objected to.)

Don't know if Littrell is a member of that association.

I heard the Cleona blow two whistles when the two boats were ten feet apart; the Cleona blew her whistles twice in succession—no space between the two whistles—not more than enough to make two whistles.

Recross-examination:

84 Mr. Littrell lives in New Orleans. It is not usual for pilots of New Orleans to belong to the pilots' association in St. Louis; don't know that there is a pilot association in New Orleans; heard there was one.

Proctor for libellant objects to the last part of the witness' answer, on the ground that the question was not put to him as to what he had heard, but he was asked what he knew, and after answering that question he added what he had heard upon that subject.

It takes the Republic from seventeen to twenty-two days to make a trip from New Orleans to St. Louis and back; can't tell how long it would take to make two trips; it depends upon circumstances; some-

times they stay longer than others in St. Louis, waiting for their turn, as they are loaded in the order in which they arrive. I think I made two trips on the Republic after the collision, and was probably one or two months on her after the collision. Kribben was discharged after the Republic arrived at St. Louis, and did not come back to New Orleans; a new captain came on her when she arrived at St. Louis, and each captain hires his own crew; neither one of our pilots came back to New Orleans; one of them came down as a passenger that trip or the trip after—I mean the trip after the collision; Mr. Kribben it was who came down as a passenger; have not frequently conversed with any one with regard to this collision; don't think I conversed more than three times with anybody since I gave my evidence in St. Louis. This evidence was taken before the local inspectors of St. Louis in writing.

Question. Do you know whether the result of this examination by the local inspectors of St. Louis was that they took Kribben's license away?

85 (Objected to by proctor for claimants, on the ground that the proceedings before the local inspectors of St. Louis are in writing, and a duly certified copy of these proceedings is the best evidence.)

Answer. The inspectors of St. Louis sent this evidence here, and the inspectors at this port suspended both pilots, as I understood it; I read it in the newspapers.

Don't know that my evidence was sent here.

Don't know who wrote me the note, about ten days ago, to come and give my testimony in this case. He did not tell what he wanted to prove by me; he only stated that he wanted to take my deposition in the case of the Great Republic and Cleona.

JOHN McCLOUD.

Sworn to and subscribed before me this 14th January, 1870.

K. LOEW,
U. S. Commissioner.

J. C. VANHOOK, sworn for claimants, says:

Was captain of the Great Republic at the time of the collision with the Cleona; am not now; ceased to be her captain the trip after the collision.

Was on the Republic at the time of the collision with the Cleona; was standing on the hurricane-deck front, near the bell, just before the collision; had been standing there some time; can't state how long. When I reached the right-hand shore and straightened up below 12-mile point, the Cleona was about half a mile ahead. I suppose the Cleona was about 75 yards from the right-hand shore when she started to cross; may have been nearer. The Republic was then about 300 yards from

86 the shore; may have been a little more or less. The moment the Cleona turned to cross the river the Republic was between 200 or 300 yards from her. When I saw the Cleona leave the shore I supposed she had sheered.

(Last answer objected to by proctor for libellant, on the ground that suppositions are not evidence.)

The fact of her attempting to cross the river that way was unaccountable except upon that supposition. It is not usual; and it is dangerous to attempt to cross at that place, or any other, when a faster boat is approaching, unless she had to make a landing and had given a signal to land which should have been understood by the Republic; because the Cleona had a right to land on either side of the river, on giving the proper signal showing what she intended to do—ringing the bell five or

six taps or blowing her whistles three or more times consecutively. Some have different signals, but none less than three; because, should they give less than three, they might cause some accident—might mislead the boat meeting her or approaching her. That is my explanation for supposing she had sheered. The Republic blew five whistles while I was on her when she intended to land.

The Cleona gave no signal to indicate that she wished to land. When the two boats were about half the length of the Cleona—I should think about seventy-five feet from each other, up and down the river, and about fifty feet to the right of the Great Republic's course—the Cleona blew two whistles rapidly, distinct, but close together, to indicate one signal, but two blows. When I saw the Cleona sheer towards the Great Republic's course I went from the boiler-deck to the hurricane-deck and told the pilot to stop the boat. He said he had stopped. I told him to back her. He said he was backing.

87 (The statements of the pilot objected to by proctor for libellant.)

The Cleona kept sheering to the left, and the Republic was made going to the left to keep clear from the Cleona. We then ran into the Cleona, aft of her hull I think; have not seen the break in the Cleona since then. I suppose we broke her fantail, cylinder-timber, and hog-chain. Both boats were at that time in the middle of the river—the Cleona square across the river, as far as I can remember, and Republic half-way between being straight across and straight up and down the river, standing about an angle of about 45 degrees in a line straight up and down the river. I ordered the mate to have the yawl ready in case any assistance was needed on the other boat. Called on the Cleona and asked how badly they were hurt, if they were sinking, and if they needed any assistance, and directed our pilot to keep close to the Cleona, which we did come alongside; called on the second mate of the Republic to make her fast, and called on the Cleona to pass her lines to the Republic. We made her fast alongside with her stern near our bow or near that position. I learned that she was not sinking, and then ordered her bow to be made fast to us about our middle, and cast her stern loose from near our bow. Worked the Republic ahead slow, so the Cleona would swing around and come alongside, so her bow would be in the same direction with ours. We then towed her ashore and made her fast, and asked what further they wanted of us. I think a passenger, somebody on the Cleona, probably an owner, asked me to hail the Welcome to come alongside. I believe it was the Welcome. It was a coast packet. I hailed her and she came. I was then asked if I would

88 take some of the Cleona's passengers, and put them off at their landing. I answered "yes" to all that wanted to come. Several then came on board; don't know the number. Asked if any further assistance was required; they answered "no," and I cast loose from her and proceeded on my voyage, and landed the passengers at their landing.

To my knowledge there was nothing that ought to have been done by the Great Republic to avoid this collision that was not done.

The speed of the Great Republic was not one-fourth of her speed when the two boats came together; she was going very slow.

The Cleona could have avoided this collision if she had kept straight up the river, or given the proper signals for crossing the river. It was no point, in my judgment, to cross the river, for the Cleona or any other boat, to get in easy water going up the river.

The passengers of the Cleona that came aboard of the Great Republic said that they could not account for the conduct of the pilot of the Cleona; censured him a great deal, and said that it was his own fault that the collision had taken place.

The acts of the passengers above mentioned and the statements made to the witness are not evidence, and ought not to be taken down as such. The statements are hearsay and not made under oath, and are objected to on the above grounds.

Question. Was or was it not prudent for the Cleona to attempt to cross the bows of the Great Republic as she did on that occasion?

(Objected to on the ground that the question is leading.)

Answer. It was not prudent.

89 There is a pilot association in St. Louis, and there is an ugly feeling between those that are not and those that are members of that association.

Don't know if there is a pilot association in New Orleans.

Cross-examination:

I was on the boiler-deck when I first saw the Cleona. The Republic was then nearer to the right-hand shore than any other. Cannot answer exactly, as I am not a pilot.

The Cleona was, I think, half a mile ahead of the Republic when I first saw her, short time before the collision; this was, I think, a few minutes before the collision. At that time the Cleona was about 75 yards from the bank of the river, more or less; can't tell exactly how far. The Republic at that time was about 300 yards from the bank of the river.

The river at that place is about one mile wide, I think.

I observed the Cleona when she first started from the left bank of the river to cross. I thought she sheered across.

Being asked what is the difference between sheering and steering,

Says: Sheering is when the boat is running off from shallow water with the pilot; steering is when the boat is under command of the pilot.

Being asked if the Cleona was steering or sheering when she crossed,

Says: I thought she was sheering when she first started.

Question repeated.

Do you know whether the Cleona was sheering or steering just before the time of the collision?

Answer. No, sir.

90 I remained no time on the boiler-deck when I saw the Cleona start from the left bank, when I went on the hurricane-roof—not five seconds, as I was watching the Cleona, and as soon as I saw this I left the boiler-deck and walked to the hurricane-roof fast. I had 25 or 30 steps to make to reach the hurricane-roof—from 25 to 50—and to ascend the stairs. I was standing on the boiler-deck a little to the left amidship, and the stairs to the hurricane-deck is on the right side of the cabin. I was not five minutes in going that distance. Can't say exactly how far the Cleona was when I got to the hurricane-roof. I got there before the Cleona had blown her whistles.

Being asked, Did you order your pilot to stop the engines of the Republic, or did he do it without being ordered?

Answers, Both.

I did not see the engines stopped before the collision; at this time I did not know that the engines of the Republic had been stopped. I knew before the collision that the engines had been stopped on account of her headway being checked.

Probably two or three minutes, and perhaps less, before the collision I know that the headway of the Great Republic had been stopped; it is hard to tell exactly the time on such occasions; can't say exactly what the distance of the Cleona from the Republic at this time was, probably about 150 yards; I could not keep my eyes all the time on the Cleona;

I talked to the pilot of the Republic, and had to turn my head to do this.

The Cleona started out what we call quick; her angle from the shore was very slight, but increased as she crossed the river.

91 I did not see that the Cleona altered her puffing at all. She seemed to be going all the time her best from the time I saw her till we struck her; don't know how many miles the Republic run up on the left bank of the river from the time we crossed over at 9-mile point; it was at least a half mile.

I hardly think that this collision would have been avoided if the Republic had kept on her course; I cannot tell; have not been able to make up my mind on the point. At the time of the collision there was plenty room for the Republic to have passed on either side of the Cleona; we struck the Cleona a pretty fair blow, no glancing; the Cleona swung around against the Republic; never removed from the Republic an inch, as the Republic's headway was dead.

It is the duty of a boat passing another to give a signal to show what side she takes.

The passing boat must give this signal. The usual distance to give such a signal is from 500 yards to up alongside of the other boat. The object of the signal is to avoid collision, and to indicate the side the boat takes. I never knew a boat in the inside ahead to give the inside to an ascending boat.

It is always usual for the hind boat to take the outside; the custom is regulated by law. I know that I would pass the Cleona when I first saw her; I thought I would pass her; the only thing that would have prevented me was an accident to my boat, or a landing, or have been detained by freight. I was not expecting any landing or detention, for freight, but we were subject to be hailed.

The Cleona was going 5 or 6 miles an hour, and we about 10 or 11.

92 Our boat gave no signals as required by the rules above referred to. It was our pilot's duty to give the signal; I didn't know that it was a neglect on his part or not at this time.

We gave no signal of any kind. Our pilot was not considered a cheap pilot by me.

Some got more and some less pay than this one.

He got $150 a month, which are the regular wages on the Republic and other boats.

I don't know how much more other pilots ask, as I did not want any other.

For one trip, several trips before the last, I paid to the pilot $250.

The trip previous to the last trip, and several others, I paid the pilot $150 a month. Don't know that my pilot was laboring under the influence of liquor on this occasion; never saw him in such condition. There was no indignation amongst our passengers against the pilot of the Republic in consequence of this collision; there was a good deal of conjecture amongst the passengers in regard to the officers of the Cleona.

(Objected to on the ground that the question as to the conjecture of the passengers had not been asked.)

I did not hear a gentleman from Shreveport, passenger, express great indignation against the pilot of the Great Republic.

Question. Did not the Republic bear to the left all the time, and in proportion to the Cleona's running from the shore, up to the time of collision?

Says, No; as soon as we found the Cleona coming out the Republic was steered out. She was swinging to the left until we struck. I did not refuse to receive any passengers from the Cleona.

93 We picked up one person in the yawl knocked overboard by the collision. Had been engaged in the trade I was running in at the time of the collision six or seven months; have been engaged 22 or 23 years in steamboating; don't know how far the Republic would have passed from the left bank following her usual course; don't know what her usual course is at that place.

Never saw a boat land at that point of the river. There are plantations along there; it is usual for coast boats to land at plantations along the river.

Redirect examination:

At the time of the collision, in my judgment, the Great Republic was completely officered, manned, and equipped; I consider her pilots were good pilots.

Recross-examination:

In general terms, our pilots were considered good pilots; pilots all talk of each other, and criticise each other, but it is no proof that they are not good pilots—if it was, there would be no good pilots.

Have never heard that Kribben was given to drinking, or was a bad pilot; have never seen him what I call drunk, but have seen him on one occasion under the influence of liquor, and that in port.

Have never heard from any one that he was a bad pilot; never heard much said of him; he was recommended as a good pilot; have known Kribben while he was on the boat, about five months—previous, and including the time of the collision.

J. C. VANHOOK.

Sworn to and subscribed before me this 14th January, 1870.

K. LOEW, *U. S. Com.*

94 *Testimony for claimant.*

J. L. WILKINS, being duly sworn, says:

Was employed on the Great Republic at the time of the collision with the Cleona in the capacity of second engineer.

Was on watch and had charge of the watch at the time of the collision. The signals were given by the pilot of the Great Republic by bells to the engineer; the bells on both sides were rung to stop both engines; the engines were stopped immediately; then two check-bells were rung, one on each side; the engines were checked immediately; this was merely a notice to us to prepare to back. The engines were stopped the moment we were ordered to stop them; then the backing-bells rang—both sides; both engines backed immediately. No time was lost in obeying these orders—they were executed as soon as the bells rang. At the time they rang my assistants were standing on the foot-boxes.

Don't know the names of those who were on duty with me then. I knew their names, but forgot them. They were very good assistants, and handled the engines very well. One of them was a licensed engineer. A full complement was on duty at the time. Am not employed on board the Great Republic now. Left her the next trip after the collision—about the 16th of September. Am acting as engineer now at Margaret's steam-bakery; have been there since I left the river, except about five weeks. Mr. Harteppe was the chief engineer on the Great Republic at the time. He is a very good engineer.

Cross-examination:

95 Did not see the collision. Don't know how far the Great Republic was from the Cleona at the time the bells were rung. I

can't say what time elapsed between the first ringing of the bells and the collision. I don't think I felt the jar. Knew nothing of the collision until some time after it occurred.

The usual complement of engineers on board the Great Republic is one chief engineer, one second, and four assistants, sometimes called strikers. Strikers are not required to be licensed, but licensed engineers very frequently take the place of strikers.

Don't recollect how many licensed engineers were employed on the Great Republic at the time, but I know there was one licensed on my watch and another one not licensed.

Did not stop the engines myself; did not reverse them; saw both engines stopped. The boat was stopped at the same time, or as near as she could be. Was standing right between the two doctors amidship at the time the engines were stopped, looking towards the engines. When I first heard the bells ring to stop I turned to the boilers and shut off the three or four valves; then turned immediately and ran up on the starboard side. At the time I arrived at the engines the starboard engines had been checked, stopped, and backed, and the larboard engine was still backing at the time. The starboard engine had stopped backing by the time I got to the foot-box.

Being asked what time elapsed between the time of his first hearing the bells ring as a signal to the engines and the time he reached the foot-box of the starboard engine, says:

I shut off the blowers; was in reach of them; shut them off just as fast as I could turn my hand three times, and ran about forty feet
96 before I reached the foot-box. It was all done inside of a minute—just as quick as I could do it. The larboard engine continued backing about five minutes after I reached the foot-box.

The starboard engine could not have made more than half a dozen revolutions backward before I reached the foot-box, and it was then stopped. We were alongside the Cleona before the larboard engine was stopped; could see her from the engine-room, from the foot-box on the starboard side, where I was standing. She was on the larboard side; she was swinging alongside of us. The Great Republic going up stream could be stopped and checked in seventy-five yards; I mean that if she was going twelve or fourteen miles an hour she could be stopped dead in seventy-five yards, and the reason that we can stop her quicker than any other boat is because she is a low-pressure boat. As soon as the throttle-valve is shut the cam-rod is thrown off and allows all the valves to seat, which holds a vacuum and causes the engines to be immediately checked, and from that position it can be reversed at the same moment of time. This don't occur in high-pressure boats.

J. L. WILKINS.

Sworn to and subscribed before me this 14th February, 1870.

K. LOEW,
U. S. Commissioner.

PHILIP BUCHANAN, sworn for claimant, says:

I reside in New Orleans; was born here; am a son of Judge Buchanan. I was on board the Great Republic on the trip she came into collision with the Cleona; saw the collision. I was sitting on the boiler-deck in front of the boat with the captain, and had a conversation with him.

We were then making a crossing from the right bank (the Algiers
97 side) to the twelve-mile point. The Cleona was then near the bunch of willows marked A on the Diagram O, running to turn the

twelve-mile point, so it appeared to me. I saw the Cleona turning, and I observed to the captain, "Why, she is taking a sheer.'

The Republic was at that time fully three hundred yards behind and one hundred yards outside the Cleona. I suppose the Cleona must have been two hundred or two hundred and fifty feet from the shore when she began to sheer. The captain was looking up the river the moment I made the remark to him, and he jumped up and ran up to the upper deck. It was, in my opinion, the most unprecedented piece of carelessness, on the part of the Cleona, that I ever saw on the river.

(Objected to by libellant on the ground that the witness is neither a pilot nor a river man, and has no experience in navigation, and has no right to give his opinion in the matter.)

The Cleona went square across the river, and right in front of us, and blew two whistles, which signal the Great Republic obeyed according to the laws of Congress, as I suppose. She turned off to the left, which brought the two boats to the middle of the river, I think.

The collision took place near the middle of the river, and the Great Republic struck the Cleona very lightly on the piece that supports the wheel near the hull.

The Great Republic was going slow when she struck the Cleona; but she was going ahead. She was making a forward motion; but whether her wheels were in motion or not I can't say. From my position it was impossible for me to hear the bell of the boat.

I know where the Waggaman plantation is, and can direct the pilot any night to land there.

98 I think the Cleona was a little below the Waggaman plantation when she began to cross.

(Objected to by libellant on the ground that the belief of the witness is not evidence.)

The Waggaman plantation is opposite the twelve-mile point.

The Cleona was at the willows when she began to cross; don't know how far that is from twelve-mile point; may be five hundred yards, half mile, or one mile.

The Cleona was in a dangerous position when she blew her whistles; can't say whether it was 100 or 200 or 250 yards from the Republic.

The signals of the Cleona were the usual two signals of a boat; I mean they were the usual signal one boat gives to another to pass her on the river. It was a signal of two whistles.

I have frequently been a passenger on steamboats on the river, going to different parishes.

Cross-examination:

Don't know how far the Republic ran up on the left bank after crossing the river from nine-mile point. We were running the same course as the Cleona—running up the river to twelve-mile point.

When we straightened up on the left-hand shore I did not notice the Cleona; in fact I did not notice her until she took a sheer; then my attention was immediately called to her.

I think it was impossible for the Republic to run from point to point, as the bend is too long. It is what I call a long bend, but can't say how long it is. The point below is called nine miles; the one above, twelve-mile point.

99 There is a bunch of willows below Soniat's house that may extend four or five hundred yards. It is a long string of willows. I refer to the willow grove below the point. This is the only bunch of willows I know or ever noticed thereabouts.

I saw the Cleona when she first turned out from the left bank. The Republic was then fully three hundred yards below her, and she must have been at least one hundred and fifty yards from the bank—not less—if anything, more. It appeared to me that the pilot of the Cleona had lost control of the boat.

Question. Did the Cleona turn slowly, as a boat usually would in turning from shore, or did she turn as on a pivot?

Answer. It appeared to me as if the pilot of the Cleona had lost the control of the boat—as if she sheered, and, finding that he could not bring her back, attempted to cross the river, and gave his signal, which was too late for the Republic to obey to avoid collision.

(Objected to by libellant as not responsive to his question.)

The question being repeated, he says:

She turned out neither slowly nor as on a pivot, but between the two. Don't know how long she was in making a turn. I was looking at her as on a boat that was going ahead of us, and my attention was particularly attracted to her as she took what appeared to me to be a sheer.

Did you see her before or after she had turned and was heading for the right bank?

Says: I have a good eyesight. On steamboats it is a pleasure to me to see what is going on on the river. I noticed her casually, as I would any boat that was ahead of us. I saw her before she made a sheer—perhaps five or ten minutes before; I can't say exactly. She appeared to me to make for the twelve-mile point, and did not appear to make for Waggaman's.

I am neither pilot or engineer enough to answer the questions of one that knows nothing about steamboating.

How long was the Cleona running from the left bank of the river before she gave the first signal?

Says: When she was square across the bows of the Great Republic she gave the signal of two whistles, which I noticed particularly. I can't tell how long.

The captain left me before the Cleona had given her signal. He went to take command of the boat, and think he went to the hurricane-deck. He left me instantaneously without saying a word to me.

I heard but one person speak very indignantly on the Republic about the pilot of the Republic. This person was Mr. Harris, a merchant of this city; and I must say that I was and felt indignant at Harris expressing himself so, as my opinion was very different from his. But I did not express my indignation to Harris, as he is a friend of mine, and did not wish to have a quarrel with him.

Don't know that the pilot of the Republic was drunk. I did not hear any whistle from the Republic in answer to the Cleona. It appeared to me that the Republic bore off as in answer to the Cleona's whistle. Boats passing each other, the boat about to pass gives the signal. From my observation the Great Republic was not near enough to give the signal.

I think they usually give that signal when a boat is about fifty yards behind. This is my observation; don't know the law about it.

The blow from the Republic careened the Cleona so much that I thought it would turn her over. I turned then away, and went to the ladies' cabin, and assured them that there was no danger for the Republic.

P. BUCHANAN.

Sworn to and subscribed before me this 15th December, 1870.

K. LOEW,
U. S. Commissioner.

I certify the within to be a true copy of the originals on file.
March 5, 1872.
[SEAL.]
(Signed) K. LOEW,
D'y Clk.

101 *Release bond.—Filed Sept'r 16th, 1869.*

United States district court, district of Louisiana.

J. M. THOMPSON
vs.
ST'R GREAT REPUBLIC. } No. 9499.

Know all men by these presents that we, P. C. Hayne, Jas. Morra, and D. L. Harlebic, residing, the first in Hamilton co., Ohio, and the latter two at Pittsburg, Penn., owners of the Great Republic, by W. B. Donaldson, master and lawful bailee for said owners, as principals, and E. Conery and J. H. Menge as sureties, are held and firmly bound unto J. M. Thompson, libellants, in the sum of ten thousand five hundred dollars lawful money of the United States of America; for the payment whereof to the said libellant, his heirs, executors, administrators, or assigns, we jointly and severally bind ourselves, our heirs, executors, and administrators, firmly by these presents.

102 Witness our respective names and seals hereunto affixed by us at New Orleans this 16th day of September, one thousand eight hundred and sixty-nine.

Whereas an admiralty warrant was lately issued out of the honorable the district court of the United States of America for the district of Louisiana, at the suit of J. M. Thompson vs. St'r Great Republic, her tackel, apparel, and furniture, and numbered 9499 on the docket of the said court, commanding the marshal to seize and take into his possession the said steamer, which has been seized accordingly, but has been released from said seizure and delivered to the master and lawful bailee for the owners thereof by reason of the signing, sealing, and delivery of these presents, said master having obtained leave of court to bond said property, and filed a claim thereto, which is now of record in the clerk's office of this court:

103 Now, the condition of the above obligation is such, that if the said claimant and sureties abide by all the orders, interlocutory or final, of the court, and pay the said libellants the amount awarded by the final decree rendered in the court to which the process is returnable, or in any appellate court, then the foregoing obligation is to be void, but otherwise shall remain in full force and virtue.

(Sig'd) W. B. DONALDSON, [L. S.]
for Owners S't'b't Gr't Republic.
(Signed) E. CONERY. [L. S.]
(d'o) J. H. MINGE. [L. S.]

Signed, sealed, and delivered in the presence of—
(Signed) K. LOEW, *D'y Clk.*

Edw. Conery and J. H. Menge, sureties on the within bond, being duly sworn, say that they reside in this city, and are worth the sum of $10,500 over and above all *his* just debts and liabilities.
(Signed) E. CONERY.
(Signed) J. H. MENGE.

Sworn to and subscribed before me this 16th day of September, A. D. 1869.
(Signed) K. LOEW,
U. S. Commissioner.

Petition to amend 2d article of libel.—Filed November 30th, 1870.

J. M. THOMPSON
vs.
ST'R GREAT REPUBLIC. } No. 9499.

To the Hon. E. H. Durell, judge of the United States district court for the district of Louisiana:

The petition of James M. Thompson, libellant in the above cause, respectfully represents that there is some inaccuracy in the 2d article of the libel in consequence of the banks of the river being described as right and left from the position and course of the steamer Cleona, instead of being described geographically, and that he is desirous of amending said 2d article of the libel so as to read as follows:

2d. That on the same evening, Saturday, August 28th, 1869, between the hours of 6 and 7 p. m., and while it was good light, so as to be able to distinguish small objects on either bank of the river, and when near 12-mile point, above this city, and libellants' steamboat was crossing from the left bank of the river to the bend on the right, and in
105 an oblique course against the current of the river, and when about in the middle of the river, the steamboat Great Republic, of the burden of about twenty-two hundred tons and upwards, coming up behind libellants' said steamboat Cleona, struck her, with great force and violence, on her larboard stern, carrying away her water-wheel, cylinder-timber, bulk-head, cook-house, breaking all her pantry-ware, looking-glasses, bowls, and pitchers in the state-rooms; also, all her skylights, knocking a quantity of flour and other merchandise into the river; also, three of the passengers and crew, two of whom were drowned, twisting the hull and cabin, so as to very seriously injure the boat; and, in fact, rendering libellants' said boat a complete wreck, so that she had to be towed to the bank of the river, from which she was on the next day brought to the city by a tow-boat, where she had to go into dock,
106 and has ever since been undergoing repairs, in consequence of said collision.

Wherefore petitioner prays that this petition be filed, and he be allowed to make the amendment to his original libel herein filed, as set forth above, and that claimants be cited to answer the same; and petitioner prays for general relief.

(Signed) BENTINCK EGAN,
Proctor for Libellants.

Let this amended libel be filed.
November 30th, 1870.
(Signed) E. H. DURELL, *Judge.*

Submission from minutes of Saturday, March 11th, 1871.

J. M. THOMPSON
vs.
ST'R GREAT REPUBLIC. } No. 9499.

This cause came up for trial—B. Egan for libellant, Randolph, Singleton & Browne for claimants—and after hearing the pleadings, evidence, and argument, the court took time to consider.

107 *Judgment from minutes of Thursday, June 22d, 1871.*

J. M. THOMPSON
vs.
ST'R GREAT REPUBLIC. } No. 9499.

For reasons orally assigned by the court it is ordered, adjudged, and decreed that the libel be dismissed, the release bond cancelled and annulled, and the libellant pay costs.

Rule for a new trial.—Filed June 22d, 1871, and order granting the same.

U. S. dist. court.

J. M. THOMPSON
vs.
ST'R GREAT REPUBLIC. } No. 9499.

On motion of Bentinck Egan, proctor for libellant in the above cause, it is ordered by the court that a new trial be granted in this cause.

Petition for a jury.—Filed June 22d, 1871.

JAMES M. THOMPSON
vs.
ST'R GREAT REPUBLIC. } No. 9499.

108 To the honorable E. H. Durell, judge of the United States district court for the district of Louisiana, in admiralty.

The petition of James M. Thompson, libellant in the above cause, respectfully represents that it is essential to the proper decision of this cause that the facts at issue, namely, by whose fault the collision was produced, be submitted to a jury of ship-masters for their opinion thereon, said opinion to have the force and effect only of an opinion given by the trinity masters when consulted by the judge of the high court of admiralty in England.

Wherefore petitioner prays that said questions of fact be referred to a jury of ship-masters, and for such further orders as may be necessary in the premises.

(Signed) BENTINCK EGAN,
Proctor for Libellants.

Let the prayer of this petition be granted.
June 22d, 1871.
(Signed) E. H. DURELL, *Judge.*

109 *Order vacating.—Dec'r 15, 1871.*

The court having further considered this petition, it is ordered that the order herein made on the 22d June, 1871, be recorded, and it now ordered that two persons having experience, both as masters and pilots, be appointed to sit as assessors to the judge in this cause, and to be selected by the libellant, the other by claimants, who, after hearing evidence and arguments in the cause, shall give their opinion to the court touching the matters in controversy, which said opinion shall not be conclusive, but shall have the force and effect only of any opinion given by the trinity masters, when consulted by the judge of the high court of admiralty in England.

December 15th, 1871.
(Signed) E. H. DURELL, *Judge.*

Order on minutes, Wednesday, January 24th, 1872.

J. M. THOMPSON
vs.
ST'R GREAT REPUBLIC. } No. 9499.

On motion of B. Egan, proctor for libellant, and on suggesting to the court that libellant had appointed Captain I. G. Landry as his assessor in this cause, it is ordered by the court that the cause be set for trial for Saturday, 3rd of February, 1872, at 11 a. m., and that claimant be notified thereof.

Order on minutes, Thursday, Jan'y 25th, 1872.

J. M. THOMPSON
vs.
ST'R GREAT REPUBLIC. } No. 9499.

Messrs. Randolph, Singleton, and Browne, proctors for the claimants, this day named George H. Kirk to sit as assessor to the judge on behalf of said claimants.

Hearing and submission, minutes, Friday, Feb'y 16th, 1872.

J. M. THOMPSON
vs. vs.
ST'R GREAT REPUBLIC. } No. 9499.

111 This cause came up for trial before the court and the two assessors selected by the parties—B. Egan for libellants, Randolph, Singleton & Brown for claimants—when, after hearing the pleadings, evidence, and argument, the court directed the assessors to hand in their opinion on to-morrow between the hours of 11 and 3 o'clock.

Opinion of assessors on behalf of claimant.—Filed Feb'y 17th, 1872.

J. M. THOMPSON
vs.
ST'R GREAT REPUBLIC. } No. 9499.

To the honorable E. H. Durell, judge U. S. district court:

After a careful perusal of the record of testimony in the suit of James M. Thompson vs. Steamer Great Republic and hearing the argument of counsel, have come to the conclusion that the main and first cause of the collision between the steamer Cleona and Great Republic was
112 the attempt of the Cleona to cross the bows of the Great Republic without first giving the usual notice of her intention to cross and making a landing, viz., three or four blows of her whistle in quick succession, and then to give the required signal for the side she wished to pass on.

The act of crossing the bow of a boat when in close proximity is forbidden by the rules of navigation, and is a most dangerous and reprehensible action at any time, and no prudent pilot will attempt it, and in the case of the Cleona was doubly dangerous, as the Great Republic was gaining on her so rapidly that a collision was probable, especially as the weight of proof to my mind is conclusive as to the signal of the Cleona being two blows of her whistle, which signal the pilot of the Great Republic was bound to interpret as an order to pass to the larboard, which he did.

When the Cleona first started out from the shore she gave no
113 signal to indicate her course, as she ought to have done; and when, in response to the two blows of the Cleona, the Great Republic pulled to the larboard, common prudence should have dictated to the pilot of the Cleona to have stopped his boat at once and backed her heavily, instead of ringing his bell to crack on all steam (vide record) and cross at all hazards; and further, that from the evidence the Great Republic was guilty of but one deviation from the rules and observances of navigation—viz., in not answering the signal of the Cleona; and though he acted promptly in letting his boat fall off to the larboard, he ought, in strict duty, to have answered the signal; but in my opinion this omission had nothing to do with the collision, for his course was fully observed by all on board the Cleona, (vide record;) and her pilot, if he thought there was a misconstruction of his signal, should at once have stopped his engines and reversed, and a collision would not
114 have taken place.

Very respectfully,

GEORGE H. KIRK.

NEW ORLEANS, *Feb'y* 17th, 1872.

Report of Assessor Landry on behalf of libellant.—Filed Feb'y 17th, 1872.

U. S. district court for the district of Louisiana.

J. M. THOMPSON
vs. } No. 9499.
ST'R GREAT REPUBLIC.

The undersigned respectfully answers or reports on the above-mentioned suit as follows:

The whole testimony in the case relative to the distance between the steamer Cleona and Great Republic at the time the Cleona started her crossing for the Waggaman plantation at varience. If the Cleona was only some three hundred yards ahead of the Great Republic it was certainly imprudent for her to take the crossing as she did. A greater distance, with a due use of signals established by law, the crossing
115 could have been effected without danger.

In our next step we again meet conflicting evidence. The Cleona, in starting across, gave one signal of one whistle; that was not answered by the Republic. A second signal of one whistle was given, and even that second whistle was not responded to by the Great Republic.

The Great Republic's witnesses admit hearing two whistles, but interprets them as meaning but one signal; and, strange to say, she did not even answer this signal. The law certainly makes it imperative to answer signals, in order to avoid mistakes. Had the Great Republic answered the signals of the Cleona, this boat, very probably, would have detected the misintapretation of the signal, and acted differently, thereby avoiding collision.

According to the testimony of captain, pilot, and others on the Great Republic, it would seem the general impression was that the Cleona had taken a sheer; they supposed so. Such suppositions are not ad-
116 missable, and ought never to be entertained by a pilot, especially when the law makes it the duty of the pilot, when a doubt, to stop his engines, exchange signals, and understand the movement of each other.

Most respectfully submitted.

(Signed) I. G. LANDRY.

NEW ORLEANS, *Feb'y 17th*, 1872.

Judgment.—Minutes.—Monday, February 19th, 1872.

J. M. THOMPSON
vs.
ST'R GREAT REPUBLIC. } No. 9499.

The court having considered the opinions given by the assessors, for reasons orally assigned, adheres to its former decision.

It is therefore ordered, adjudged, and decreed that the libel be dismissed, the release bond cancelled and annulled, and that libellant pay costs.

Motion for a suspensive appeal.—Filed February 27th, 1872.

U. S. district court.

JAMES M. THOMPSON
vs.
ST'R GREAT REPUBLIC. } No. 9499.

117 On motion of Bentick Egan, proctor for James M. Thompson, libellant in the above cause, and on suggesting to the court that he is informed and believes that there is error, to his prejudice, in the final judgment or decree rendered on the above cause on the 19th Feb'y, 1872, and signed on , and that libellant is aggrieved by the same, and is desirous of taking a suspensive appeal from said final judgment or decree to the honorable United States circuit court for the fifth circuit and district of Louisiana:

Therefore it is ordered by the court that James M. Thompson, libellant in the above cause, be allowed a suspensive appeal from the above final judgment or decree, returnable in the honorable circuit court for the fifth circuit and district of Louisiana, on 2d Monday of March, 1872, on giving bond in the sum of five hundred dollars, with surety according to law.

Appeal bond.

UNITED STATES OF AMERICA, *District of Louisiana.*

118 District court of the United States, in admiralty.

JAMES M. THOMPSON
vs.
ST'R GREAT REPUBLIC. } No. 9499. Appeal bond.

Know all men by these presents, that we, James M. Thompson, as principal, and S. Bloch, as surety, are held and firmly bound unto W. B. Donaldson, P. C. Hague, James Morrow, and Mrs. Hartebec, claimants and owners of the Great Republic, in the sum of five hundred dollars, to be paid to the said W. B. Donaldson, James Morrow, and Mrs. Hartebec, claimants and owners of the Great Republic, for the payment of which, well and truly to be made in lawful money of the United States, we bind ourselves and each of us, our and each of our heirs, executors, administrators, jointly and severally, firmly by these presents, sealed with our seals and dated at New Orleans, the 27th day of February, 1872.

119 Whereas the above-named James M. Thompson has appealed to the next term of the circuit court of the United States for the fifth circuit and district of Louisiana from a final judgment of the district court of the United States for said district, rendered against him on the 19th of February, 1872, in the above-entitled cause:

Now, therefore, the condition of this obligation is such that if the above-named appellant shall prosecute his appeal to effect, and answer all damages and costs, and satisfy whatever judgment may be rendered against him if he fails to make his appeal good, then this obligation to be void; otherwise, the same shall be and remain in full force and effect.

(Signed) JAMES M. THOMPSON, [L. S.]
By BENTICK EGAN, *his Proctor.*

(Signed) S. BLOCK, [L. S.]
Firm of Block Brothers, 67 Carondelet, residence 494 Magazine st.

Signed, sealed, and delivered in presence of—
BENTICK EGAN.

120 District court of the United States, district of Louisiana.

I certify that the foregoing 20 pages manuscript, together with the printed record, comprizing 100 pages, do form and contain a complete and correct transcript of all the proceedings had, material documents filed, and evidence adduced in the trial of the case of J. M. Thompson vs. St'r Great Republic, No. 9499 of the docket.

In faith whereof I hereto set my hand and the seal of our court, at New Orleans, this 5th March, 1872.

(Signed) K. LOEW,
[SEAL.] *D'y Clerk.*

PROCEEDINGS IN U. S. CIRCUIT COURT.

Hearing and submission of case.—Extract from minutes, May 27th, 1872.

NEW ORLEANS, *Monday, May* 27th, 1872.

Court met pursuant to adjournment. Present: Hon. W. B. Woods, presiding judge.

121 J. M. THOMPSON *vs.* ST'R GREAT REPUBLIC. } No. 6666.

This cause was called on the transcript of the record from the district court—B. Egan for libellant appellant, C. B. Singleton for appellees—and after hearing the pleadings, evidence, and argument, the court took time to advise.

Decree.—Extract from minutes of May 29th, 1872.

J. M. THOMPSON *vs.* ST'R GREAT REPUBLIC. } No. 6666.

For reasons orally assigned, it is ordered that the judgment rendered by the district court be affirmed, and it is now ordered, adjudged, and decreed by this court that the libel be dismissed with costs in both courts.

Rule for a new trial & grounds.—Extract from the minutes & filed May 31st, 1872.

122 J. M. THOMPSON *vs.* ST'R GREAT REPUBLIC. } No. 6666.

On motion of B. Egan, proctor for libellant in the above cause, it is ordered by the court that claimants in the above cause do show cause

on Saturday, 1st of June, 1872, at 11 a. m., why a new trial should not be granted in the above cause, on the ground that the judgment is contrary to the law and the evidence on file.

Marshal's return.

Received, May 31st, 1872, by the U. S. marshal, and on the same day, month, and year, served a copy of within motion on Randolph Singleton and Brown named herein, by handing the same to R. H. Browne.

NEW ORLEANS, *June 1st*, 1872.

(Signed) S. W. REED,
D'y U. S. Marshal.

Order new trial refused.—Extract from the minutes of June 1st, 1872.

J. M. THOMPSON
vs.
ST'R GREAT REPUBLIC. } No. 6666.

123 The rule for a new trial came up, and, after hearing argument of proctors on both sides, ordered that the rule be discharged and a new trial refused with costs.

Final decree from judgment book.

Circuit court of the United States, fifth circuit and district of Louisiana, April term, 1872.

NEW ORLEANS, *Wednesday, May 29th*, 1872.

Court met pursuant to adjournment. Present: Hon. W. B. Woods, prs'd'g judge.

J. M. THOMPSON
vs.
ST'R GREAT REPUBLIC. } No. 6666.

For reasons orally assigned, it is ordered that the judgment rendered by the district court be affirmed, and it is now ordered, adjudged, and decreed by this court that the libel be dismissed with costs in both courts.

Decree rendered, May 29th, 1872.

Decree signed, June 3rd, 1872.

(Signed) W. B. WOODS, *Judge.*

124 *Motion and order for appeal.—Extract from minutes, June 3rd, 1872.*

J. M. THOMPSON
vs.
ST'R GREAT REPUBLIC. } No. 6666.

On motion of B. Egan, proctor for James M. Thompson, libellant in the above cause, and on suggesting to the court that said libellant is informed and believes that there is error to his prejudice in the final judgment or decree rendered in this cause on the day of May, 1872, and that he is aggrieved by said final judgment or decree, and is desirous of taking a suspensive appeal therefrom with supersedeas to the honorable Supreme Court of the United States.

Therefore it is ordered by the court that James M. Thompson, libellant

in the above cause, be allowed a suspensive appeal with supersedeas from the final judgment or decree rendered in the above cause to the honorable Supreme Court of the United States on giving bond in the sum of two hundred and fifty dollars, and that said appeal be
125 made returnable on the first Monday of December next.

Bond for Appeal.—Filed June 6th, 1872.

Know all men by these presents, that we, James M. Thompson, as principal, and Simon Bloch, as surety, are held and firmly bound, jointly and severally, unto W. B. Donaldson, P. C. Hargue, James Morrow, and Mrs. Hartupee, claimants of st'r Great Republic, in the sum of two hundred and fifty dollars, lawful money of the United States of America, to be paid to the said W. B. Donaldson, P. C. Horgue, James Morrow, and Mrs. Hortupee, claimants of st'r Great Republic, heirs, executors, administrators, and assigns, for which payment, well and truly to be made, we bind ourselves, and each of us by himself, and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated the 6th day of June, in the year of our Lord eighteen hundred and seventy-two.

Whereas, James M. Thompson has this day presented a motion
126 to the honorable the circuit court of the United States for the fifth circuit, holding session in and for the district of Louisiana, praying for a suspensive appeal with supersedias from a decree rendered in the suit of James M. Thompson vs. St'r Great Republic, whereby W. B. Donaldson, P. C. Hargue, James Morrow, and Mrs. Hartupee, are claimants, No. 6666 of the docket rendered, on the 29th May, 1872, and signed on 3rd June, 1872.

Now, the condition of the above obligation is, that we, the above bounden James M. Thompson and Simon Bloch, will well and truly pay to the said W. B. Donaldson, P. C. Horgue, James Morrow, and Mrs. Hartupee, claimants of the st'r Great Republic, the defendants in said suit, all such damages as they may recover against us, in case it should be decided that the said appeal was wrongfully obtained.

(Signed) JAMES M. THOMPSON, [L. S.]
By BENTICK EGAN, *his Proctor.*
(Signed) S. BLOCK. [L. S.]

Signed, sealed & delivered in the presence of—
(Signed) F. A. WOOLFLEY.

127 UNITED STATES OF AMERICA,
District of Louisiana, ss:

Personally appeared Simon Bloch, who, being duly sworn, says, that he resides in the city of New Orleans; that he is the surety on the within bond, and is worth the sum of two hundred and fifty dollars over and above his debts and liabilities and legal exemptions.

(Signed) S. BLOCH.

Sworn to and subscribed before me this 6th June, 1872, at New Orleans, La.

(Signed) F. A. WOOLFLEY,
U. S. Comm'r Dist. of La.

Approved Sept'r 2d, 1872.
(Signed) W. B. WOODS, *Judge.*

Agreement to annex to this transcript the original plan and sketch and printed copy of record.—Filed September 21st, 1872.

U. S. circuit court.

JAMES M. THOMPSON
vs.
ST'R GREAT REPUBLIC.

128 We hereby agree that the original plans and sketches annexed to the record in this cause be annexed to the record on appeal to the Supreme Court of the United States, and that the printed copy of said record be also used so far as the same is printed, the clerk being dispensed with copying anything contained in said printed record when making one his transcript for the Supreme Court of the United States.

September 21st, 1872.

(Signed) RANDOLPH, SINGLETON & BROWNE,
Proctor for Claimants.

(Signed) BENTINCK EGAN, *Proctor for Libellants.*

[Here follows diagram marked page 128.]

129 UNITED STATES OF AMERICA.

Circuit court of the United States, fifth circuit and district of Louisiana.

CLERK'S OFFICE.

I, Francis A. Woolfley, clerk of the circuit court of the United States for fifth circuit and district of Louisiana, do hereby certify that the foregoing 28 pages manuscript, together with the printed record, comprising 100 pages, contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced on the trial of the case of James M. Thompson vs. Steamer Great Republic, No. 6666 of the docket, so far as the same now remain of record or on file in said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 23d day of September, A. D. 1872.

[SEAL.] F. A. WOOLFLEY, *Clerk.*

[5-cent internal-revenue stamp, canceled.]

I, E. H. Durell, United States judge for the district of Louisiana, do hereby certify that Francis A. Woolfley, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, was, at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand at the city of New Orleans, in said district, this 23d day of September, A. D. 1872.

E. H. DURELL, *Judge.*

[5-cent internal-revenue stamp, canceled.]

130 THE UNITED STATES OF AMERICA,
District of Louisiana.

The President of the United States to W. B. Donaldson, P. C. Hargue, James Morrow, and Mrs. Hartupee, claimants of steamer Great Republic, greeting:

You are hereby cited and admonished to be and appear at a Supreme

Court of the United States to be holden at the city of Washington on the first Monday of December next, pursuant to a motion for appeal and order of record, & filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, in the case entitled James M. Thompson vs. Steamer Great Republic, wherein the said James M. Thompson is libellant and appellant, & *and* you are defendants, to show cause, if any there be, why the judgment rendered against the said appellant as in said motion mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this sixth day of June, in the year of our Lord one thousand eight hundred and seventy-two.

W. B. WOODS, *Judge.*

131 (Endorsed:) United States circuit court. No. 6666. James M. Thompson vs. Steamer Great Republic. Citation of appeal.

Marshal's return, June 6, '72.

And on the 10th day of June, 1872, served a copy of within citation of appeal personally on C. B. Singleton, att'y, a member of the firm of Randolph, Singleton & Brown, att'ys for W. B. Donaldson et al.

New Orleans, June 24th, 1872.

S. W. REED,
D'y U. S. Marshal.

On this 24th day of June, 1872, personally appeared before me the subscriber, S. W. Reed, and makes oath that he delivered a true copy of the within citation, as stated in his official return hereon.

S. W. REED,
D'y U. S. Marshal.

Sworn to & subscribed before me.

F. B. VINOT,
D'y Clk.

(Indorsement on cover:) No. 355. James M. Thompson, appellant, vs. W. B. Donaldson, P. C. Hargue, James Morrow, & al., claimants of the steamer Great Republic. Louisiana C. C. U. S. Filed 10th December, 1872. 131 pages.

Supreme Court of the United States.

JAMES M. THOMPSON, APPELLANT,

VERSUS

W. B. DONALDSON, P. C. HARGUE, JAS. MORROW ET ALS., CLAIMANTS OF STR. GREAT REPUBLIC.

Brief on behalf of Plaintiff and Appellant.

BENTINCK EGAN,
Proctor for Libellant.

Clark & Hofeline, Printers, 9 Bank Place.

Supreme Court of the United States.

JAMES M. THOMPSON, APPELLANT,

VERSUS

W. B. DONALDSON, P. C. HARGUE, JAS. MORROW ET ALS., CLAIMANTS OF STR. GREAT REPUBLIC.

Brief on behalf of Plaintiff and Appellant.

STATEMENT.

This is a libel *in rem* for a collision.

The facts of this case, as disclosed by the evidence, are, that the steamboat Cleona, a small stern wheel boat of the burden of 118 tons, left New Orleans on Saturday evening, the 28th of August, 1869, at about 5 P. M. bound on a voyage to Donaldsonville, La., with an assorted cargo of merchandize for the various plantations on the coast; that the steamboat Great Republic, of the burden of 2200 tons, a large and very fast vessel, with side wheels, left New Orleans the same evening, sometime after the Cleona, and bound on a voyage to St. Louis; that both boats crossed the river from the right to the left bank (geographically speaking) just above nine mile point, and straightened up on the left bank and ran parallel with the shore for from two to two and a half miles, and distant

from it from 40 to 50 yards, the Cleona being some distance ahead and the Great Republic following almost in her wake, the first going at the rate of from 7 to 8 miles an hour, and the last from 10 to 12; that just previous to reaching 12 mile point the Cleona started to cross the river in an oblique direction, intending to make a landing at Waggaman's plantation, to put out freight; that the Cleona blew one whistle just as she commenced to bear to the left, and towards the right bank of the river, for the purpose of indicating to the Republic the shore she would take, and shortly afterwards finding that the Republic was also bearing or swinging to the left, and approaching her rapidly, she blew another whistle to attract the attention of the steamer Great Republic, and immediately rung the engine bells to put on all steam to endeavor to get out of the way of the Republic. Finding all these things ineffectual, and that the collision was inevitable, the pilot of the Cleona swung her head as much down stream as he could, so that the blow might be as light as possible, and that it might avoid the hull. Neither of these two whistles were answered by the Great Republic, nor does she appear to have made the slightest effort to avoid the collision, but on the contrary, through the ignorance, incapacity, recklessness, and probably drunkenness of her pilot, and the carelessness of her master, kept bearing to the left, following the Cleona, instead of keeping her course, and finally overtook her about the middle of the river, and rushed into her, striking her in the fantail just aft of the hull, tearing it, the water wheel, and cylinder timbers away, careening her over so that water ran in the main hatch, knocking three persens overboard, two of whom were drowned, and rendering her a complete wreck, and on backing off came into her hull a

second time, with such force as to cut it down to the water's edge, and by the careening a large quantity of freight was lost overboard in addition to the persons mentioned above. That the collision occurred about 7 o'clock in the evening and before dark, small objects being easily seen on both banks of the river; that the river is more than half a mile wide at the place of the collision, was entirely free from obstructions, and there was ample room for the steamer Great Republic to have passed on either side of the Cleona; that the officers and crew of the latter done everything in their power to avoid the collision, and when it became inevitable, by their skill and extraordinary coolness in the presence of great danger, broke the force of the blow, and saved the boat and the lives of all on board, and that had the Republic kept her course, or used the slightest exertions by bearing to the right instead of the left, by stopping her engines, or backing, or giving the signal required by law when about to pass a vessel going in the same direction, the collision would have been avoided.

The Circuit Court erred in rendering a decree dismissing the libel of appellant against the steamboat Great Republic, the evidence being clear and positive that the steamboat Great Republic was in fault in FIVE PARTICULARS:

First, In not keeping her course, instead of bearing to the left, and following the steamer Cleona until she ran into her.

Second, In not stopping her engines and checking her speed in proper time, it was not enough to do so when it became too late, even supposing that it was done, which is denied, and the evidence sustains the denial.

Third, In not altering her course to the starboard by

porting her helm, when the collision became inevitable from the course she was pursuing; bearing to the left, with her helm hard a starboard, ten feet would have cleared the Cleona, and that might have been produced by porting her helm but for a moment; if it would not have swung the bow of the Republic to the starboard, it would certainly have prevented it swinging to the larboard, with the jackstaff bearing directly for the Cleona and following her as she attempted to get out of the way.

Fourth, In not giving any signal within 800 yards, or at any other distance, as required by rules 1 and 2, adopted by the Board of Supervising Inspectors January 26th, 1869, and failing and neglecting to answer the signals given by the steamer Cleona.

Fifth, In not having any proper officer on watch and control of the navigation of the vessel at the time of the collision, the captain whose watch it was, being sitting on the lower or boiler deck talking to a passenger (P. Buchanan) instead of the roof of the boat where he could see and superintend her navigation, and only went to the roof when his attention was called to the danger of a collision—in other words when every one saw that a collision was inevitable.

ARGUMENT.

These facts are clearly established by the testimony of the following witnesses: A. M. Geary, Engineer of the Cleona, R. pp. 6 to 8; J. A. Troxler, Pilot of the Cleona, R. p. 8. This witness states that he was in the pilot house with his partner, Mr. Rigley, who was at the wheel, and that his partner told him to blow the signal of one whistle to indicate that they wanted the right bank, when he saw the Republic coming up very fast on them,

and distant about 700 yards, which he did; that the Great Republic did not answer this signal, when they blew another, and that between the two there was an interval of about 1½ minutes; his partner then told him she would strike them amidship but that he would go ahead and let her strike the wheel, which she did about half a minute afterwards. And again, R. p. 10, he states there was ample room for the Republic to pass us without colliding. Everything was done on our part to avoid the collision. My partner tapped the gong three times for the engineer to put more steam on our boat, and the engineer gave more steam; none of our signals were answered in any manner; they did not appear to pay any attention to them on board the Republic, but kept following us; the Republic was not properly managed; she should have stopped if she did not understand our signals; she did not stop; she never ceased her wheels until after she struck the Cleona; she could have stopped after our first whistle, or even if she had stopped immediately after our second whistle she could have avoided the collision; half a second would have been sufficient in time to have avoided the collision. And again, R. p. 11: when the Republic changed her course it was too late for us to stop the Cleona. The first whistle we blew was to give notice of our intention to cross the river; *at that time we had no fear of a collision.*

The next witness is W. H. Rigley, Pilot of the Cleona, R. pp. 11 and 12. This witness states, I came on watch at the head of the bluff bar where the letter "C" is on the diagram "A" (annexed to this and preceding witness es' testimony); the Republic was then at the willows, 600 or 700 yards in the rear, where the letter "Z" is on the same diagram. The track of the Great Republic

ought to be in our track, at the letter "Z." She was directly in our wake; when I looked out from the Pilot house, I had to turn my head directly back to see her; if a cannon ball had been shot from our boat it would have passed right between her chimneys. When I took the wheel my partner told me Mrs. Waggaman's landing was the next. Both boats were then heading the current right up, and distant 20 or 25 yards from the left bank; *as soon as I took the wheel* I headed over to Waggaman's landing and probably a minute elapsed after I started across when I told my partner to blow one whistle, which was done; the Republic not answering and gaining upon us fast, probably not more than 300 yards distant, probably 1½ or 2 minutes elapsed, I told my partner to blow one whistle again, which was done, the Republic not answering. I then saw that there was going to be a collision and saw that she would strike us about midships, the way she was heading. I told my partner before she should cut me in two, she should cut the wheel off, which was done. The diagram "A" represents the position of the boats at the time of the collision. I put my helm hard astarboard for the purpose of giving the Republic the wheel instead of letting her cut the Cleona in two. The effect of this was to swing the head of the Cleona down stream. Before doing this I tapped the gong three times to the engineer to put on all the steam he had, which was done. Had the Republic stopped her wheels within 100 feet the collision would have been avoided. Again, R. p. 12, I saw three men in the river, one was picked up. *The listing over was caused by the Republic shoving us up the river against the current; (this shows that the Republic was then under way and had not stopped her wheels, otherwise she would not have careened the Cleona*

over so that the only thing that prevented her from capsizing was the guard of the Republic had lapped over the guard and hull of the Cleona). I never left the Pilot house until the Republic came up a second time, cutting through the nosing. After the collision the Cleona was a complete wreck, unable to move and leaking badly. The collision occurred between sun set and dark; a man could be seen on either side of the river. After my partner blew the second whistle I could see the people on the Republic. At the place of the collision the river is wider than it is opposite Canal street. We had been heading across for about 4 minutes before the collision. I had not been on watch more than 5 minutes, and had reached about the middle of the river when the Great Republic struck us. From the time the first whistle was blown I paid particular attention to the movements of the Republic. She left oblique to cross the river, appearing to follow us, steering right for us; her proper course would have been to keep up the left bank for 1½ or 2 miles above our crossing, or rather above where we turned to make our crossing. I did every thing that was in my power to avoid the collision. I was as cool and as calm as I am now; it was not possible for me to avoid it: I dare not back her, or stop her, had I done it the result would have been the total loss of the boat—she would have been cut in two. I gave the proper signals and at the proper times. I mean the first signal and also the second one. When I saw she did not answer the first I blew the second; it was the Republic's duty by law to answer my signal; it is the government regulation for Pilots; by the first signal I meant for her to keep to the right of me, and I to the right of her; there was plenty of time and plenty of room for her to have gone to the right of me; there was

room enough for six boats abreast of one another between me and the left bank. The river is there wide, clear, and free of all obstructions; clear jam up against the bank. I know that the Pilot of the Republic could have avoided the collision; it lay altogether with him, owing to the position of the two boats. And again, R. p. 13: From my position in the Pilot house I could not see the wheels of the Republic, *but I judge from the collision and its effects that she did not stop them until after it, as she kept shoving us up the river for* 3 *or* 4 *minutes after* she struck us; she then backed out and we righted. And on his cross-examination, R. p. 13, he states it was a minute and a half or two minutes after my first whistle that I observed the Republic change her course; she was steering right on us when I blew the second whistle; she obliqued with us.

The next witness was David McCusland, Mate of the Cleona, R. p. 13. He states: We left New Orleans on Saturday, 28th Aug., at 5 P. M., bound for Donaldsonville, loaded with freight and passengers for various points on the coast. And again, R. pp. 13 & 14: Just before supper I was washing myself, I should judge it was 7 o'clock, it was getting dark, but you could see both banks of the river and small objects on them. I think the river is a little wider than it is here. After the collision, I looked to see which bank we were closest to, and I could see the bank plain. I could not say which we were closest to, think they were about equal distance; the boat was about the middle of the river. When I was engaged in washing myself I heard our whistle blow once—heard no answer from the other boat; about 1½ or 2 minutes after I heard another blast which was not answered either; at this time I was still in the wash room about getting

through washing; then I went out from the wash room to the cabin, and sat down to the supper table, and commenced to take my supper, when I was thrown right across the table by the collision; I then got up, ran down on the lower deck, and saw the Great Republic swinging from us; the Cleona then righted; the collision was very violent. (The testimony of this witness is important in showing the interval that elapsed between the first and second whistle, and the collision, otherwise he could not have done all that he did: the time would have been insufficient, if it was counted by seconds instead of minutes). The balance of his testimony goes on to show the damage; that the boat was set on fire aft by the cooking stove being knocked over, and that there was ample room for the Republic to have passed them on either side, and that the Cleona was properly and fully manned and officered, and that the Pilots were considered skillful, prodent, and bore good reputations for handling a boat; that they intended making a landing at Waggaman's plantation; that the usual signal for a landing is three whistles at intervals of one or two seconds; that they did not blow any signal for a landing on this occasion, because they did not get close enough, and that he thinks the collision was three, four or five minutes after the second whistle.

David Klotter, carpenter of the Cleona, R. p. 18, states, While I was going up on the roof, the Pilot blew the whistle; after a while he blew another; about 4 or 5 minutes after he had blown the first whistle he blew the second; about 5 or 10 minutes after the second whistle was blown the Republic struck the Cleona; at the time of the second whistle the Republic was 6 or 700 yards behind. The Cleona was crossing the river when the first whistle was blown; she had to put out some freight across

the river, and make a landing. Being shown two diagrams "A" and "O". says, I cannot point out the position of the two vessels; all I know is that the Republic was 6 or 700 yards behind the Cleona when she blew a whistle in crossing the river. And again, R. p. 19: Had the Pilot of the Republic stopped only one lick of her engine, the Cleona would have been clear of her—10 feet would have been sufficient to clear her. The Republic followed her course to the left hand when the Cleona crossed the river; had she gone to the right hand there would have been no collision; the Republic saw that the Cleona was crossing the river, and followed her to the left. The Republic did not stop her engine up to the time of her striking the Cleona. *I saw the Republic's wheels in motion up to the time of the collision, from the roof of the Cleona where I was standing, and it was daylight at the time.* The Republic gave no signals or notice of any kind. If the Republic had borne to the right, the accident would not have occurred; there was plenty of room to the right; 3 or 4 boats could have gone to the right; we were about the middle of the river at the time of the collision; the river is about as wide at that place as in front of St. Peter street. (The balance of his testimony describes the efforts they made to avoid the collision, and its effect, much the same as the witnesses whose testimony has been previously quoted, and that the Republic struck them a second time, though not so forcibly as the first.)

W. H. King, Master of the Cleona, R. p. 23, states: When I left the roof I went to the boiler deck and sat down, and remained there until I heard my boat blow one whistle; I then got up from the starboard and went to the larboard side, looked behind and saw the Republic coming right into the Cleona. When I saw the Republic com-

ing, there had been two whistles blown, and at least 4 or 5 minutes' interval between each. When I first saw the Republic after I heard my boat's first whistle, she was not more than 200 yards behind us; this was about 4 minutes after the first whistle was blown; I did not see her when the first whistle was blown; I had to walk to the larboard side and look out to see her; I judge there were 4 or 5 minutes' interval between the two whistles from the time it took me to go from one side to the other of the boat; the second whistle was not blown till I got to the larboard side; I was in no hurry at first because I thought it was blown for a landing, and I did not think the Republic was within a mile of us; the Henry Ames had just passed us; the Cleona was headed to make a crossing. Being shown the diagram "A" he states, if the dots in black ink marked "Z:C" are within 50 yards of the shore, they represent the track of the Cleona; the Republic's track was just behind us, directly in our wake; there was plenty of water there; the proper track of the Republic would be the line now drawn by me and marked "AA" in red ink; some large boats go above 12 mile point and then cross as shown by the red line "bb" on diagram "A"; boats like the Republic keep from 50 to 60 yards from the bank going round the point. There is plenty of water at 12 mile point, I think about 20 feet; boats can go right up at the point where there is plenty of water. (He then goes on to describe the injury sustained by the Cleona in consequence of the collision; states that the bill annexed to the libel is correct, and estimates the damages at $7000, as therein claimed). And again, R. p. 24, I have been a steamboat Captain and owner for 15 years, with the exception of the present time. As far as I could see the Cleona did everything in her power to avoid this collision. There was

the river, and make a landing. Being shown two diagrams "A" and "O". says, I cannot point out the position of the two vessels; all I know is that the Republic was 6 or 700 yards behind the Cleona when she blew a whistle in crossing the river. And again, R. p. 19: Had the Pilot of the Republic stopped only one lick of her engine, the Cleona would have been clear of her—10 feet would have been sufficient to clear her. The Republic followed her course to the left hand when the Cleona crossed the river; had she gone to the right hand there would have been no collision; the Republic saw that the Cleona was crossing the river, and followed her to the left. The Republic did not stop her engine up to the time of her striking the Cleona. *I saw the Republic's wheels in motion up to the time of the collision, from the roof of the Cleona where I was standing, and it was daylight at the time.* The Republic gave no signals or notice of any kind. If the Republic had borne to the right, the accident would not have occurred; there was plenty of room to the right; 3 or 4 boats could have gone to the right; we were about the middle of the river at the time of the collision; the river is about as wide at that place as in front of St. Peter street. (The balance of his testimony describes the efforts they made to avoid the collision, and its effect, much the same as the witnesses whose testimony has been previously quoted, and that the Republic struck them a second time, though not so forcibly as the first.)

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plenty of room for the Republic to pass on either side of the Cleona; there was enough of room for the Republic to pass between the Cleona and the shore at the time the Cleona started to cross from the left shore; do not know that the Republic did anything to avoid the collision, but rather think she tried to run right over us, from what I could see. When I went to look out after our first whistle and saw the Republic, I think her wheels were moving ahead; *I know they were moving ahead when she struck us, because I saw them with my own eyes, and because she struck our boat and listed her over so that the water ran into the main hatch by shoving her around against the current and retained her in that position for about* 4 *minutes.* She then backed clear of us and then came into us a second time about the fantail, breaking the guard. This collision would have been avoided had the Republic kept her proper course on the left bank. I could not stand up after the collision, I had to throw myself down and hold on to something to prevent myself from going overboard. One man close to me slipped overboard, and another one was knocked overboard and drowned.

This testimony is corroboarted in nearly every important particular by one passenger on the steamboat Cleona and two on the Republic. We will quote from their evidence.

H. L. Swords states, R. p. 21 and 28, I was a passenger on the Great Republic * * * * Capt. King was sitting with me on the right hand side of the stairs leading up to the boiler deck; we were sitting there some 15 or 20 minutes talking together, when our attention was called to several passengers on the larboard side of the boat, all looking to the rear with their bodies hanging over the guards. Capt. King and myself instantly crossed to the

same place; the moment I got there the Cleona's whistle sounded. He goes on to state in substance, that he saw the Republic about a square from the Cleona; that it appeared to him she would strike them amidships if she did not alter her course; that it looked to him as if they were bent on the Cleona's destruction, and he started for the cabin and was thrown violently against the side when he got there; that after the collision he applied on board of the Republic to be taken to his destination at Donaldsonville, and they refused him passsge.

B. F. Litterel states, R. pp. 25 and 26, I am a pilot by profession and have been since 1853; was passenger on the steamer Great Republic on 28th August last, on the evening of the collision with the steamboat Cleona. We left New Orleans between 5 and 6 P. M.; made a landing at Carrollton; after leaving Carrollton, was sitting on the boiler deck railing; remained in that position until the collision was bound to occur, and then left my seat; the Republic made a long crossing from 9 mile point; after reaching the left bank she kept from it, I suppose 200 yards more or less. The Cleona was keeping up the left bank much closer than the Republic; when we straightened up the left bank the Cleona I suppose was half a mile ahead of us. Although I am a practical steamboat man, standing my watch since 1853, I will state that not anticipating a collision I do not pretend to give the exact distances, but only approximately. I noticed when the Cleona first left the left bank to cross over, I suppose she was then from 300 to 500 yards ahead of us; the Cleona attempted to make a short crossing; she did not blow any whistle when she first started to cross the river. I suppose we were from 50 to 100 yards from the Cleona when she blew two whistles; they were given for a signal;

two distinct blowings. The Republic attempted to pass the Cleona on her larboard side, and changed her course for that purpose. (*this the Court will observe was the cause of the collision*). Had not the Republic changed her course there would have been no collision; I suppose the collision was produced by the Republic changing her course. The boats were about the middle of the river at the time of the collision; do not know how wide the river is there but suppose about half a mile, a little wider than in front of this city, probably a little wider. There was when the collision occurred abundance of room on the starboard of the Cleona, that is at the time of the collision; if the Republic had kept her course, as the Cleona was in the middle of the river, and it is not usual to navigate the middle of the river in going up the stream, there would have been no collision; was not standing alongside of Mr. Fulkerson at the time of the collision; (this disproves a statement of that person); was a little before in conversation with him; *Mr. Fulkerson remarked to me when the Republic was about* 100 *yards from the Cleona, that if his partner Mr. Kribben did not stop the Republic, she would be into the Cleona.*

(Fulkerson and Kribben were both Pilots of the Republic, the latter at the wheel, and his partner saw the danger immediately, and in an unguarded moment predicted the result; this shows neglect and carelessness on the part of Kribben).

I could not say whether the Republic stopped then; do not know whether her wheels were stopped at all before the blow; did not hear the engine bells ring; I do not suppose that the Republic's headway could be stopped within 100 to 150 yards. (The evidence of the engineer of the Republic, a witness for claimants, which we will

presently review, shows that she could be stopped in 75 yards, in consequence of the peculiar construction of her engines, and that they were not stopped until after the collision, his testimony clearly shows). Was Pilot a part of two years on the Lee and have stopped her probably within that distance; the Lee is faster than the Republic; on the evening of the collision I suppose the Republic was running 10 or 12 miles an hour, I judge about 10. The Republic gave no signal; properly it was her duty to give the first signal, stating which side she would take, as she was gaining on the Cleona. And again, R. p. 27: Had the Republic kept her usual course of navigation up the left bank she would have gone 3 miles to the head of 12 mile point, where she would have started to cross to 18 mile point. I have never spoken to the owner of the Cleona; do not know him. I never spoke to any one connected with the Cleona on the subject of this collision, and never saw his counsel until this moment of giving my deposition in this case.

And on his cross-examination, R. p. 27, he states: I think it was prudent for the Cleona to have attempted to cross the river where she did, if she had business over there.

J. L. Harris states, R. p. 29: Was a passenger on the Great Republic, on the evening of the 28th of August, 1869; was sitting down on the boiler deck forward of the cabin 10 or 15 minutes before the collision with a friend; the first my attention was called to the Cleona was my friend, Mr. De Harman, remarked that we would have a collision; I remarked that it was not necessary. And again, R. p. 29: Shortly after my remark, I noticed that the little boat was making a crossing and she blowing her whistle, which was a signal for the side she wanted, as I

understood it; the other boat not responding I remarked to Mr. De Harman, that there would be unless the Pilot of the Great Republic stopped the boat; shortly after this remark the collision occurred; was excited and never heard the bell to stop the Republic; my impression is that she was not stopped; had been looking for the boat to stop or a bell to stop her, but did not hear it; am not a very excitable man; have been in command of a boat, but owing to the confusion incident to an imminent collision, I was somewhat excited; clerked on the river two years, commanded four on the lake, and commanded again a short time on the Mississippi river; have quit steamboating since 1857, but commanded a boat during the war; am now a commission merchant in this city; do not know the captains or clerks of either the Cleona or Republic. FROM MY KNOWLEDGE IN STEAMBOAT MATTERS, I THINK THIS COLLISION COULD HAVE BEEN AVOIDED IF THE REPUBLIC HAD STOPPED HER ENGINES IN TIME; OF COURSE IT COULD HAVE BEEN AVOIDED; I should judge that the Cleona was 150 yards from the Republic when my attention was first called to her.

The testimony of the last two witnesses from their position, knowledge of steamboating and disinterestedness, are entitled to great weight, probably more than any others, and *they both show conclusively, that the fault was entirely with the Pilot of the Great Republic; every one on the Republic could see that the collision was inevitable sometime before it occurred, unless the pilot of that boat stopped her, or pursued his course instead of swinging to the left, as he did, following the Cleona.* His conduct in the management of the Republic is inexplicable, except that it was the result of gross ignorance, criminal recklessness, and probably drunkenness. On the latter point the evidence is strong against him.

Capt. Henry A. Ealer, states, R. pp. 17 and 18: That he is a pilot by profession, and has been on the river since 1835, and as pilot since 1838. Am acquainted with W. J. Kribben, for 20 years; never was pilot with him but once, about 11 years ago; am very well acquainted with his character for the last 3 or 4 years; he has been given to drinking a great deal, when I say drinking I mean spirituous liquors.

Claimants have a theory by which they contend they were not in fault, and are exonerated from responsibility for this collision, and according to the testimony of most of their witnesses, it is certainly a strange one. It is, that the Cleona took a sheer, and ran away with her pilots for deep water, because she (being endowed with reason) naturally sought deep water—in the same manner that water was formerly supposed to abhor a vacuum, and consequently ran in and filled it to the extent of 32 feet. We will now review some of this testimony.

E. L. Fulkerson, states—R. p.30. That he is now a pilot on the Stonewall, was a pilot on the Great Republic in August last, Mr. Kribben was the other pilot and the one on watch; and again, R. p. 30, the Great Republic's tonnage 2200 tons; she is very heavy and very fast; and again, R. p. 30, all the while after we left Carrollton until the collision, I was sitting on the boiler deck in conversation with Mr. Litterell, who is a pilot on the river and was a passenger on the Republic; and again—R. p. 30, the Cleona had been running very close to the left bank; she was running the shore very close, and all of a sudden she darted a short distance, and then straightened up, apparently, a little her course, when all of a sudden appeared to pull to the right bank of the river; it was a very sudden turn to make; the whistles of the Cleona

were sounded as she made this sudden turn; we were not more than 50 yards from the Cleona when she blew her whistles—I mean that we were outside of her in the current about 100 yards, and about 50 yards below her in the current. (Here we have a direct and positive contradiction in the testimony of this witness; he says the Republic was a large, heavy, and very fast boat, and was going 12 miles an hour, as he states farther on, and swinging to the larboard, which would increase her distance outside of the Cleona, yet the latter, a small, slow boat, not going much over 7 miles an hour, if that much, is able to make more than the 100 yards that the Republic is outside of her, while the latter is making 50 yards, the distance she was below the Cleona. This is an absurdity on its face, and stamps the whole testimony of this witness as unworthy of belief; but, Mr. Litterell, the person with whom he was sitting, shows that his statements then were entirey different. His remark to the latter was: "IF MR. KRIBBEN DOES NOT STOP THE REPUBLIC HE WILL BE INTO THE CLEONA" See Litterell's testimony quoted above.

Again, this witness states, R. p. 30, that the Republic had been backing her engine sometime previous to the collision, but that she is such a heavy boat she could not be stopped in 30 or 40 yards. On his cross-examination, it is shown that he knew nothing of this whatever, nor could he, from his position, yet he has not hesitated to swear to it; but we will presently come to the engineer's testimony, which shows that she was neither stopped nor backing until after the collision, AND THAT SHE COULD HAVE BEEN STOPPED IN 75 YARDS. And again, Rec. p. 31: he states the Republic had been pulling to the larboard between one and two minutes, when the collision occurred.

Now, if she was going 12 miles an hour, she would have gone one mile in 5 minutes, equal to 1760 yards: if it was one minute, she would have gone one-fifth of this distance, or 350 yards, and if for two minutes 700 yards. This shows that the witness contradicts himself in distances as well as everything else, and that his testimony is totally unreliable. In the latter part of his cross-examination, R. p. 33, he says that they were about 200 yards from the Cleona when she ran off from the shore—above he says 50 yards, and in another place 40 or 50.

Wm. J. Kribben states, R. p. 33, that he was pilot at the wheel of the Great Republic on the night of the 28th of August, 1869, when the collision between the Great Republic and the Cleona occurred. (It will be observed that this witness says night, but all agree that it occurred in the evening before dark.) And again, R. p. 34: when I arrived at the point "M", (see diagram) I saw the Cleona sheer to the larboard; I was below her in the current about 250 or 300 yards, and to the larboard about the same distance; she gave no signal when she started to the larboard; I pulled to the larboard as soon as I saw her sheer to the larboard, thinking at the time she was running off from the shore; the Cleona continued on that course and gave no signal at the time. (Here we have a direct contradiction of the testimony of the last witness, Fulkerson, and his partner, on two points, first, on the distance, and second, on the signals given by the Cleona. This witness says she gave no signal when she first left the shore to cross, the other says she did; but the statement about distances is again a positive contradiction. This witness says they were 250 yards to the larboard of the Cleona: this is 150 yards more than claimed by the first witness, and that the Cleona was about that distance

ahead of the Republic, yet he makes the Cleona run that 250 yards, and more, as they were increased by 500 or 600 more by the Republic bearing to the left, in the same time that it took the Republic to make a less distance, though she was going nearly twice as fast, in other words, making nearly two hundred yards to the Cleona's one hundred, as their relative speed was according to nearly all the witnesses, about 7 to 12. Again, none of these witnesses will admit that the Cleona steered for the right bank, they all put it sheered. Now there is a vast difference between steering and sheering; but the cause of the collision is clearly traceable to the ignorance, incapacity, and criminal conduct of this witness. He admits in his statement quoted above, that he bore to the larboard as soon as he discovered the Cleona running for the right bank, thereby following her until he overtook her in the middle of the river, instead of keeping his course, which the whole evidence shows would have prevented the collision, even his own statement admits that, but to excuse himself, he says he thought the Cleona had sheered. We have shown that such was not the case, nor was a boat likely to sheer and keep sheering for half a mile; the very excuse is an absurdity on its face; but if he made such a mistake, it is his error not ours, and does not excuse his running after the Cleona until he run her down. Again, if he had stopped, checked, or backed the Republic for but half a second, there would have been no collision, as the evidence shows ten feet would have cleared the Cleona, and five feet saved everything except a few of her wheel arms.)

Again, R. p, 34: Immediately after the Cleona had sheered to the larboard, I pulled my boat to the larboard, and rung both stopping bells, and then rung the backing

bells to back her. (This statement is clearly not true on its face, as she had, according to his own statement, quoted above, 250 yards to run, being that much below the Cleona, and could certainly have been stopped in 75 yards; but what makes it still more absurd is, the Cleona was going 7 miles an hour, almost in the same direction as the Republic, and yet she could not run fast enough to get out of the way of this boat that was stopped, and backing, according to the statement of this witness; so that the Republic, when stopped and backing, was going up the river faster than the Cleona with all the steam she could pack on, according to the statements of the pilots and engineer; but the testimony of the engineer of the Republic, shows still more clearly that the engines of the Republic were not either STOPPED OR BACKED UNTIL AFTER THE COLLISION.)

The following question was put to the witness: (R. p. 34)

Question—After the Cleona had commenced to go out from shore, why did you not put your helm to the larboard and thus pass between her and the shore?

Answer.—In all probability I would have cut her in two, and besides had I not struck her, I would have run into the shore and damaged the Republic. (This answer shows that the witness was willing to swear to anything. The whole evidence, even his own statement, shows that the collision took place in the middle of the river, that ten feet would have cleared the Cleona, that he had been swinging to the larboard, and if he had kept his course instead of swinging to the larboard there would have been no collision). And again, R. pp. 34 & 35: It was an impossibility after the Republic had swung to the larboard, to have swung to the starboard of the Cleona, this is my opinion, hence I continued to pull to the larboard to avoid

the collision if possible. (THIS WAS THE VERY THING THAT PRODUCED IT, 10 FEET TO THE STARBOARD WOULD HAVE AVOIDED IT ENTIRELY, and if this witness had but starboarded his helm for one second, it would have at least checked the swinging of the larboard, which would have been sufficient to have entirely avoided the collision; but according to his own statement he put and kept his helm to the starboard and consequently kept the boat's head continually swinging to the larboard, following the Cleona to the last moment, even to the collision, when he must have seen that the reverse would have avoided it; drunkenness and stupidity can alone account for these acts; his own statement certainly convicts him, viewed in any light; he says he rung both the backing and stopping bells to show the exertions he made to avoid the collision; now let us suppose, for argument's sake, that he did, though the proof is positive to the contrary; why did he keep the wheel to the starboard and her bow swinging to the larboard following the Cleona instead of putting her wheel to the larboard and thereby checking her swinging to the larboard, if not swinging her head to the starboard? Again, why did he not stop the starboard wheel, that would have assisted her in coming to the starboard? But he does not pretend to have done any of these things, although the evidence is clear and positive that they would have prevented the collision, and the steering was the most important of all, as it was by it the boats were brought close to each other, and the collision finally produced, and yet the originator, the prime cause, or promoter of the collision, was kept and maintained in such a position that it was bound to produce it, by this very man who pretends to have exerted himself to prevent it by stopping the engines; he has selected the engines because what he done

with them could not well be contradicted, but the swinging of the boat to the larboard was known to all, and he dare not deny it, and yet never tried to stop it). It is a well settled rule of law that where one vessel is guilty of some negligence the burden is on her to show that this negligence was not the cause of the collision. The schr. Lion, 1 Sprague, 40; Clapp vs. Young, U. S. D. C., Mass. 6 Law Rep. 111; Bullock vs. steamer Lamar, Law Rep. 8, 275; Waring vs. Clark, 5 H. 445—465; the brig Emely Olcott, Adm. 132; Cushing vs. the John Fraser, 21 H. 184; Parsons on Shipping, 528. Yet neither of these two witnesses, whose testimony we have reviewed above, has shown that everything was done by the Republic that was possible to avoid this collision, but the contrary appears affirmatively from the testimony of the last whose special duty it was to have avoided this collision, and by whose neglect and mismanagement it was actually produced, when the slightest exercise of ordinary skill or prudence would have avoided it; the simple act of bearing to the starboard instead of the larboard would have brought the Republic's stem clear of the Cleona's stern.

Again this witness states on his cross-examination, R. p. 35: We were in sight of the Cleona from the time we left port until we struck her, (for a distance of 12 miles, and yet ran into her). And again, R. p. 35: The Cleona was 1½ miles ahead of us on the same bank, perhaps a little more, (left bank under 12 mile point). The reach on the left bank where boats generally straighten up after crossing for 12 mile point is not 3 miles, (the evidence shows that the Cleona did not go the length of the reach by half a mile or more; now suppose we put the Cleona's course up that bank as 2 miles before she turned to cross, she had only half a mile of that distance to run, while the

Republic had 2 miles; and even allowing their speed to be as 1 to 2, then the Cleona must have been *one* mile ahead of the Republic when she turned to cross; this clearly appears from the statement of this witness; this was certainly a safe distance ahead to turn to cross, even supposing that the Republic was 250 outside of her, as she would only have to make that distance while the Republic had to make 1760 yards, equal to one mile, in order to bring them together; but the witness says she may have been a little more ahead, if so it made the crossing so much safer; but the facts are still stronger in favor of the Cleona, because the Republic was not going twice as fast as she was; the testimony is conflicting in regard to the speed of the boats, but none put the Republic at less than 10 or more than 12, and the Cleona at less than 7 or more than 8½ miles). Again, R. p. 35: Cannot say how many yards it is from the shore to the place where the collision occurred, it may have been 800 yards. (This shows that the Republic had gone from 500 to 550 yards from her course following the Cleona, as according to this witness's statement her course was from 250 to 300 yards from the shore; we have however shown that it was actually less by nearly 200 yards, and some of claimant's witnesses admit it). Again, R. pp. 35 and 36: I did not give any signal when I was approaching the Cleona, because the law does not specify any distance for giving signal in passing boats; I did not think I was in signal distance. (The latter part of his statement is absurd; he did not think he was in signal distance, and yet had actually struck and careened the Cleona over. What would he call signal distance, if it is not sometime before the blow? Again, R. p. 36, he states: It is the duty of the Pilot overtaking another boat, if he intends to pass her to give

a signal of one or two whistles as the case may be, to indicate the side he intends taking. (And yet he did not comply with this law because he did not think he was within signal distance. When would he be within signal distance if not when he was tearing the boat to be passed to pieces?) And again, R. p. 36: At the place of the collision there was plenty of water on either side of the Cleona; I could have passed her on either side so far as water was concerned. The Republic struck the Cleona on her larboard side near the fantail. I sometimes drink spirituous liquors; I took none for 6 hours before the Great Republic left port that day; I could not say how many drinks I took, did not keep any account of them. (We presume they were too numerous to keep any account of.) And again, R. p. 37, on his re-direct examination he states: The approaching boat has the right to give the signal; I would have given the signal to let her know that I wished to go to the larboard of her, and the only reason I did not give it was that in my judgment I did not think I was within signal distance. (We wonder what would be the signal distance within the judgment of this man?) Again, R. p. 37, on being asked what he considers signal distance, he answers: That depends upon circumstances, there is a difference between day and night; if I was approaching a boat and about to pass her at night, I would give a signal at 5, 6 or 700 yards; in day time, and a good piece of the river having ample room, I might approach her within 50 feet before I gave the signal, and consider it perfectly safe; I mean 50 feet lower down. (But in this case his testimony shows that he gave none because he did not consider he was within 50 feet, though he had actually struck the Cleona. *Now what better evidence could we have that this man was drunk when he did not think he*

was within 50 *feet of the Cleona, and yet had actually struck her, and was forcing her up the river, because he intended giving the signal when he got within signal distance, according to his idea* 50 *feet, but he never discovered that he had got that close until too late, and then we presume concluded the signal to be unnecessary.*

The next witness was John McCloud, R. pp. 37 and 38: he states he was assistant clerk of the Republic at the time of the collision with the Cleona; I was standing forward looking out at the Cleona; she was running up the right hand shore going up, and all at once she started right square across the river, and we being so close behind her it was impossible to miss her; we were coming up at 10, 12 or perhaps 13 miles an hour; when the Cleona started to cross, I think she was 20 yards from the shore; as she left the shore, our pilot kept sheering to the larboard and backing at the same time in hopes that he could avoid her. And again, R. p. 38: I should judge the Cleona was 300 yards from the Republic when she started to cross. (On his cross-examination, R. pp. 38 to 41, this witness contradicts nearly all of the above statements, and particularly the backing he shows he knows nothing about it.) And again, R. p. 38: I judged as she was running in shallow water, that she had started for deep water, or ran away with the pilot. (This statement is simply absurd, as the witness did not know whether the Cleona was running in deep or shallow water; but he makes it still more so in a subsequent place.) R. p. 38: My reasons for supposing that the Cleona had sheered or ran away with the pilot, are because in a case of a boat running along in shoal water, *she will naturally start for deep water.* (This statement would endow the boat with reason, and make her naturally seek deep water.)

The Republic was 30 yards outside of the Cleona. (From his testimony above he puts the Cleona 20 yards from the shore and 300 ahead, consequently the Cleona would have had to go but 30 yards while the Republic was making 260, to have escaped the collision; this she could have done with ease even supposing the Republic was twice as fast as the Cleona, but she would have been assisted in this still more, as, according to the statement of this witness, the Republic was backing as soon as she discovered the Cleona crossing, consequently their relative rates of speed must have been greatly altered in favor of the Cleona escaping the collision, if there is a word of truth in this man's statement.) And again, on his cross-examination, R. p. 39, he states: When I first saw the Cleona, the Republic was 20 or 30 yards to the left of her, continuing about that same distance until the Cleona sheered; do not know that the Cleona sheered, nobody could tell; I watched the Cleona particularly when she first started from the shore as I knew we were bound to hit her; as soon as the Cleona started from the shore the pilot of the Republic commenced gradually pulling to the larboard; I did not see the engines of the Republic stopped; I heard the bells to stop them and then back them. (This statement contradicts some of his previous testimony and at the same time shows that the collision was caused by the pilot of the Republic pulling to the left, as he has already stated that the Republic was below the Cleona and but from 20 to 30 yards to the left, and if the Republic was backed, as he states, the Cleona would certainly have been able to run those 20 or 30 yards before the Republic could run 300, especially so considering that the Republic was backing and consequently reducing her speed.) R. p. 39. *Our bells to stop the engines*

were rung just as soon as the Cleona sheered off. (This statement strengthens our argument above.) Again: The Republic was 200 or 300 yards from the Cleona when the latter started to cross the river; did not see the wheels of the Republic stopped, or backed; no one could see them from where I was; I know the Republic was backing, because her headway was stopped; had she been going at full speed she would have gone right through the Cleona and cut her in two; I should judge the Cleona was struck 8 or 10 feet forward of her wheel, just where the engine is set; I should judge so, because I did not see her struck—I ran back aft; I supposed the Great Republic was about 6 or 8 feet from the Cleona when I ran back aft; I ran back aft because I was afraid our jackstaff might fall on me or something might hit me. This man says the headway of the Republic was stopped; he jumps to this conclusion, because if she was going at full speed she would have gone right through the Cleona; this reasoning is certainly good, but unfortunately for the veracity of the witness the Cleona was not struck in the hull but in the fantail and wheel: consequently the Republic could not have gone through the Cleona, and cut her in two. Again, he judges that the Cleona was struck 8 or 10 feet forward of the wheel; in this he is also wrong; she was not struck there, but at the fantail behind the hull; but the facts are that this man was running from what he conceived to be danger, as he states himself, and having got clear of that, he was willing to swear to any thing, and give his judgment about everything; his testimony is a mass of judgments and suppositions, and is entitled to no consideration except on one point. R. p. 39: I watched the Cleona particularly when she first started from the left shore, *as I knew we were bound to hit*

her. (The Cleona was then half a mile off. See his testimony, p. 40.) As soon as the Cleona started from the shore the pilot of the Republic commenced gradually pulling to the left. (Every person on the Republic could see that they were bound to hit the Cleona, but this pilot of the Republic who kept pulling his boat to the left, following the Cleona.) And again, R. p. 40: The blow we struck the Cleona was a glancing blow, her head came right alongside of the Republic and her stern out in the river. (Most of this is positively contradicted by the testimony of nearly every witness. The Cleona was not struck near the engine, nor is it 8 or 10 feet from the stern, but she was struck on the fantail, nor was the blow a glancing one as sworn to by this witness, but a direct one which careened the Cleona over, and kept shoving her broadside on up the river.)

Again, R. p. 40, he says, that after the collision the Republic passed the Cleona and turned round, and towed the Cleona ashore, (this is all contrary to the truth, and though unimportant in itself, it stamps the testimony of this witness as unworthy of belief. The captain of the Republic says, that after backing out of the Cleona they came up again, and by fastening the stern of the Cleona near the bow of their boat they went ahead on their engines, which brought the bow of the Cleona alongside; they then fastened it and loosened the stern, and by going ahead again brought the bow of the Cleona up stream in the same direction with the bow of the Republic, and then towed her ashore.

Again, R. p. 40. When one boat intends to pass another running in the same direction, the usual distance for blowing a whistle is 100 yards. This signal is to be given by the boat about to pass the other: the Republic

he then went to the hurricane roof; and from his testimony on page 41, had been standing there for sometime, he can not say how long, and yet he saw his pilot running directly for her, bearing to the left as she bore to the left, with his jackstaff covering the Cleona, like a sportsman would his game with the sight of his gun, without making the slightest effort to prevent it, by stopping his boat or bearing to the right instead of the left, the river from his statement being a mile wide; but why was he on the boiler deck talking to his passengers, instead of the hurricane roof, attending to the navigation of his vessel? he knows he was direlect in his duty in that respect and has attempted to show on his direct examination that he was there and had been there sometime previous to the collision; but this statement is broken down on his cross-examination where he admits being on the boiler deck; but we will presently come to the testimony of Buchannon, in which the position of this man within a few moments before the collision is well shown, and this is one of the claimant's witnesses. Being asked the difference beetween sheering and steering, R. p. 43, he says: The first is when the boat is running off from shallow water with the pilot; (as if a boat was endowed with reason, and naturally ran for deep water, instead of sheering into shoal water, which would be just as likely to occur as any other; but the proof in this case is positive, that there was plenty of water, and the boat took no sheer on the pilots; and if from ignorance this witness actually did come to this conclusion, it is his own fault, and not that of the Cleona, and her owners must take the consequences of having put an incompetent man in command of their boat). Being asked again, R. p. 43, whether he knew if the Cleona was sheering or steering at the time of the collision, he says "*no.*"

Again, R. p. 44, he says: I hardly think that this collision would have been avoided if the Republic had kept on her course; cannot tell; have not been able to make up my mind on this point; at the time of the collision there was plenty of room to have passed on either side of the Cleona; we struck the Cleona a pretty fair blow; no glancing.

(The witness cannot make up his mind that the collision would have been avoided by the Republic keeping her course, but admits that there was plenty of room for the Republic to have passed on either side of the Cleona, and that they struck the latter in the fantail while bearing or steering right for her; 10 feet would have cleared her; but yet this witness cannot make up his mind to tell the truth, in other words that they could not and would not have struck the Cleona if they had not followed her; it was the following the Cleona that produced the collision, and the reverse course would and must inevitably have prevented it).

And again, R. p. 44: The Cleona swung round against the Republic, never removed from the Republic an inch as the Republic's headway was dead. (This statement is contradicted by the testimony of every witness whose evidence is in the record, in two particulars: 1st. It is positively shown that the Republic struck the Cleona twice, once in the fantail, and again in the guard and hull; 2d. that when she first struck her the blow was so great that it tore away the fantail cylinder timbers, water wheel, hog chain, and forced her up against the current of the river so as to careen her over in such a manner that men and freight fell overboard, and water ran in the main hatchway sufficient to put 4 feet in the hold of the Cleona; and yet this witness would have us believe his

silly story that the Republic's headway was dead at the time of the collision). Again he states, R. p. 44: It is the duty of a passing boat to give a signal to show what side she takes, and the usual distance to give such a signal is from 500 yards to alongside of the other boat; the object of the signal is to avoid collisions and indicate the side she takes. (We think it would be a useless formality if not given until she was alongside, and this witness must certainly know it, but here we have him again trying to impose upon the Court with another silly story, when he must have known the contrary, as a commander of a steamer).

Again, R. p. 44: Our pilot gave no signal as required by the rules above referred to; it was our pilots' duty to give the signal; I do not know that it was a neglect on his part or not at this time. (No, he knows nothing that would injure his case, and would no doubt have sworn just as hard the other way had it been his interest; but he admits the duty flowing from the law.) Again he says, R. p. 44: Our pilot was not considered a cheap one by *me;* some get more and some less than this one, he got $150 per month, which are the regular wages on the Republic and other boats; I do not know how much other pilots ask as I did not want any other; several trips before the last I paid $250 to the pilot. (This shows that Kribben was considered a second rate or cheap pilot; he had been on the boat for about 5 months according to this witness's statement, and he paid him $100 per month less than he paid others).

The following question was put to this witness, R. p. 44: Did not the Republic bear to the left all the time and in proportion to the Cleona running from the shore up to the time of the collision?

Answer.—"No", as soon as we found the Cleona coming out the Republic was steered out; she was swung to the left until we struck. (The answer "No" to this question is directly and positively contradicted by his own explanation, and shows at once that the witness was too much biased in his own favor to tell the truth, though it finally came out of him).

P. Buchannan, a witness for claimants, R. pp. 46, 47, says: I was sitting on the boiler deck in front of the boat with the captain, and had a conversation with him; I saw the Cleona and observed to the captain why she is taking a sheer; the Republic was at that time fully 300 yards behind and 100 yards outside of the Cleona; the captain was looking up the river; the moment I made the remark to him he jumped up and ran up to the upper deck; (this testimony shows that the captain was not watching the Cleona, or on duty as he pretends, but was amusing himself in conversation with his passenger, and that this passenger's remark called him to his post and where he ought to have been from the first; and if he had been there no collision would have happened, as he might have then given the necessary orders to prevent it. Again, R. 47: The captain left me before the Cleona had given her signal; he went to take command of the boat; I think he went to the hurricane deck.

This shows that there was no person in command of the boat just previous to the collision; the captain only went to take command when it was too late to do any good; he should have been in command of her before. Again R. p. 48: From my observation, the Great Republic was not near enough to give the signal; I think they usually give the signal when a boat is about 50 yards behind; this is my observation; do not know the law

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This shows that there was no person in command of the boat just previous to the collision; the captain only went to take command when it was too late to do any good; he should have been in command of her before. Again R. p. 48: From my observation, the Great Republic was not near enough to give the signal; I think they usually give the signal when a boat is about 50 yards behind; this is my observation; do not know the law

about it. This last statement extracted from the testimony of this witness is sufficient to show its bias, and condemn it from the beginning to the end; he admits that a signal should be given; thinks that it should be at 50 yards; and states, that the Great Republic was not near enough to give this signal, and at the same time admits in a previous part of his testimony that the Republic struck and collided with the Cleona. Is it possible to conceive anything more ridiculous and contradictory than the statements of this witness? but an examination of his testimony is sufficient to condemn it, except probably his being in conversation with the captain of the Great Republic, and the indignation he heard one of the passengers of the Republic express against the pilot of that boat, that gentleman was Captain J. L. Harris, whose testimony we have previously reviewed.

J. L. Wilkens, R. p. 45, says: Was employed on the Great Republic at the time of her collision with the Cleona, in the capacity of second engineer; was on watch and had charge of the watch at the time of the collision. And on cross-examination, R. pp. 45, 46, says: Did not see the collision; do not know how far the Republic was from the Cleona at the time the bells were rung; I cannot say what time elapsed between the first ringing of the bells and the collision; I do not think I felt the jar; knew nothing of the collision until some time after it occurred. Again, R. p. 46: Did not stop the engines; did not reverse them; saw both engines stopped; the boat was stopped at the same time as near as she could be; was standing right between the two doctors, amidships, at the time the engines were stopped, looking towards the engines; when I first heard the bells ring to stop I turned to the boilers and shut off three or four

valves, then tnrned immediately and ran up the starboard side; at the time I arrived at the engine, the starboard engine had been checked, stopped and backed, and the larboard engine was still backing at the time; the starboard engine had stopped backing by the time I got to the foot box.

Being asked, R. p. 46, what time elapsed between the time of his first hearing the bells ring as a signal to the engines and the time he reached the foot box of the starboard engine, he says, I shut off the blowers, was in reach of them, shut them off just as fast as I could turn my hand three times, and ran about 40 feet before I reached the foot box; it was all done inside of a minute, just as quick as I could do it; the larboard engine continued backing about 5 minutes after I reached the foot box; the starboard engine could not have made more than half a dozen revolutions backward before I reached the foot box; it was then stopped; we were alongside the Cleona before the larboard engine was stopped; could see her from the engine room, from the foot box on the starboard side where I was standing; she was on the larboard side; she was swinging alongside of us.

(The testimony of this witness is very important inasmuch as it positively contradicts the statements of the captain, pilot, and all the other witnesses introduced by claimants in regard to the stopping, and backing of the Great Republic; and shows clearly from an examination of it, that she was neither stopped or backed until after the collision. The starboard engine was stopped and made about six revolutions backwards, in less time than it took the witness to turn his hand three times and run about 40 feet to the foot box; this must have been done almost instantaneously, as stated by the witness, as

he was standing within reach of the blowers when he received the signal, and had nothing to do but to turn them which was done in the same time it took him to turn his hand three times, and then run 40 feet, to the foot box of the starboard engines, and when he got there that wheel had stopped backing; now why was it stopped backing and larboard engine kept backing? It would have a tendency to swing the head of the Republic to the starboard, while the other would swing her head to the larboard: the first would have had the effect of avoiding the collision and the last to produce it. The answer is obvious, the Cleona had been struck, the six revolutions backwards were made in conjunction with the larboard engine to take the Republic from the Cleona which she was then careening over and pushing up the river against the current, it could have had no other object, othewise it would have continued longer; but its purpose was accomplished in six revolutions, or in less time than it took the witness to turn his hand three times and run 40 feet; the larboard engine was kept backing for an entire different purpose, it was to bring the head of the Republic more to the larboard to enable her to come against the stern of the Cleona, and make it fast, as explained above. Again: Kribben, the pilot, and also the captain, were silent about this manouver, they took care not to explain it, and yet it must have been done under their instructions. Again R. p. 46. The Great Republic going up stream could be stopped and checked in 75 yards; I mean that if she was going 12 or 14 miles an hour, she could be stopped dead in 75 yards, and the reason that we could stop her quicker than any other boat is, because she is a low pressure boat; as soon as the throttle valve is shut, the camrod is thrown off, and allows all the valves to seat,

which hold a vacuum, and cause the engines to be immediately checked, and from that position it can be reversed at the same moment of time; this does not occur in high pressure boats.)

(This latter statement shows clearly that there could have been no efforts made to stop the Republic previous to the collision; if there were, they must have been successful, as the two boats were going in almost the same direction; and if 75 yards would have been sufficient to stop the Republic dead still, less than half that distance would have enabled the Cleona to outrun her, and avoid the collision.

Alfred B. Davit, second clerk of the Republic, R. p. 16, says that he was laying down on the bench in the pilot-house, talking to the pilot, Kribben, and his wife; (this was the way they appear to have been amusing themselves instead of attending to the duties of a pilot.) The testimony of this witness is unimportant, as he appears to have seen nothing until they were almost on top of the Cleona; and then, in a confused manner, he says, R. p. 15, the direction of the Republic was not changed, while I was in the pilot-house; I did not notice any; I am positive of that fact; (the pilot and all the other witnesses say it was changed; that he pulled and kept pulling to the larboard; yet this witness does not hesitate to swear to the contrary: this shows his testimony unworthy of consideration.)

Again, R. p. 16, I never paid any particular attention to the course of the boat, only I was alongside of the pilot, and he never changed the wheel, and he could not turn it unless I saw it.

By the act of Congress, 1864, p. 61, Art. 16, every steamship, when approaching another ship, so as to involve

risk of collision, shall slacken her speed, or, if necessary, stop and reverse; and every steamship, when in a fog, go at a moderate speed.

By the 17th Art. of the same act, every vessel overtaking any other vessel, shall keep out of the way of this last mentioned vessel.

In the case at bar, the evidence is positive that the Republic did not comply with the 16th section of the act, above referred to, though there was risk of a collision; in fact it was predicted by all the passengers on the boat long before it occurred, and even by one of the pilots of the Republic, in his statement to Mr. Litterell, a passenger, and pilot by profession. His words were, "*if Mr. Kribben does not stop the Republic he will be into the Cleona.*" He did not stop her, and the prediction was verified to the letter, every one appeared to see the consequences before the collision occurred, but the reckless, and probably drunken pilot at the wheel of the Great Republic. Nor was there any effort made to keep out of the way of the vessel to be passed, "*the Cleona,*" as prescribed by the 17th Art. of the act above referred to, but the reverse; the evidence which we have quoted above shows that the Republic, instead of endeavoring to keep out of the way of the Cleona, as she was bound by law to do, actually followed and bore after the Cleona, until she overtook her in the middle of the river and ran into her without the slightest check on her course; and even supposing that the Republic did stop her engines and back on them, though the evidence is to the contrary, as we have shown above, yet he bore to the larboard after and following the Cleona, instead of keeping his course, or bearing to the starboard, either of which proceedings would have avoided the collision entirely.

It has been repeatedly held that where a collision has occurred, and one vessel has been guilty of some negligence the burden is on her to prove that this negligence is not the cause of the collision. The schooner Lion, 1 Sprague, 40; the Anglo Norman, Newb. R. 482; Clapp vs. Young, 6 Law R., 111; Bullock vs. Lamar, 8 Law R., 275; Waring vs. Clark, 5 Howard's, 441; the Emely Alcott, Admiralty, 132; Cushing vs. the John Fraser, 21 Howard, 184.

Nor is it enough to show that the collision could not have been prevented at the moment, *if it might have been by previous precautions.* The Virgil, 7 Jur. 1174: 2 W. Rob, 201, 205; Steamer New York vs. Rea, 18 Howard, 223 and 4; the Clement, 2 Curtis C. C. 363; Wakefield vs. steamer Governor, 1 Clifford C. C. 93.

In the Columbia, 10 Wallace, 246, quoting from the language of the Court, Mr. Justice Strong, as the organ of the Court says, p. 250: Plainly, she had no right to expect the Propeller to change her course; it was therefore a fault in the Columbia that she did not port her helm and go astern of the other vessel; and the fault was the more inexcusable, because she knew even before she had settled on her course, that the course of the Propeller must take across any line the Columbia could take in going directly to the sea. There was nothing then to prevent her adapting such a course as would have avoided all danger of collision; instead of that she went straight downthe river in a line nearly parallel with the ends of the piers, and very near them; and as the vessels approached each other on converging lines, she swung to port so as to come more directly into the line of the Propeller's course. *This was the exact opposite of what she should have done.*

We think the Columbia was the following vessel, and if she was, another regulation required her to keep out of the way of the Propeller.

This case is almost identical with the one at bar, the Propeller had left the coal docks at Jersey City, and was proceeding across the Hudson into the East river, the Columbia had left her dock in New York, and was proceeding down the Hudson river, on a line parallel with the ends of the piers; the vessels approached each other on converging lines; the Propeller must cross any line the Columbia could take in going out to sea; the Columbia swung to the left by starboarding her helm, thus bringing her more in the track of the Propeller, and was the following vessel; all this occurred in the case at bar. The Cleona and Great Republic were approaching each other on converging lines; the Great Republic knew that the course of the Cleona must take across any line she could take going up the river; there was nothing to prevent her adopting snch a course as would have avoided all danger of a collision—instead of doing so, she bore to the left by starboarding her helm the exact opposite of what she should have done—keeping her jack-staff covering the Cleona until she ran her down in the middle of the river. and she was the following vessel; the parallel between the two cases is complete with the exception that in the case at bar, the testimony of both libellants and claimant's witnesses agree in regard to the facts found by the Court, in the case of the Columbia; thus relieving the Court from the burden of sifting the evidence to find the facts.

Now in the case at bar the evidence is conclusive that the Republic was guilty of neglect and mismanagement in five particulars: *First*, in not keeping her course instead

of following the Cleona; *Second*, in not stopping her engines and checking her speed in a proper time, it was not enough to do so when it became too late—even supposing that it was done, which we deny, and the evidence sustains the denial; *Third*, in not altering her course to the starboard when the collision became inevitable; by bearing to the starboard ten feet would have cleared the Cleona, and that might have been produced by porting the helm but for a moment; if it would not have swung the bow of the Republic to the starboard, it certainly would have prevented it swinging to the larboard, and this would have prevented the collision. *Fourth*. In not giving any signal within 800 yards or any other distance as required by rules 1 and 2, adopted by the Board of Supervising Inspectors, 26th of January, 1869, and failing and neglecting to answer the signals given by the Cleona *Fifth*. In not having any proper officer on watch and control of the navigation of the vessel.

In the case of the Ottowa, 3 Wallace, 273, Mr. Justice Clifford, as the organ of the Court says: Steamers are required to have a constant and vigilant lookout, stationed in proper places on the vessel, and charged with the duty for which they are assigned; they must be persons of suitable experience, properly stationed on the vessel, and actually and vigilantly employed in the performance of that duty. See also Chamberlin et als. vs. Wood, 21 Howard, 570; The Genessee Chief, 12 Howard, 461; St. John vs. Paine, 10 Howard, 585; Haney vs. Baltimore Steam Packet Co., 23 Howard, 293; Str. New York et als. vs. Rea, 18 Howard, 225.

Of these five things, any one of which would have prevented the collision, the Republic does not pretend to have performed more than *one*, that was the second, stop-

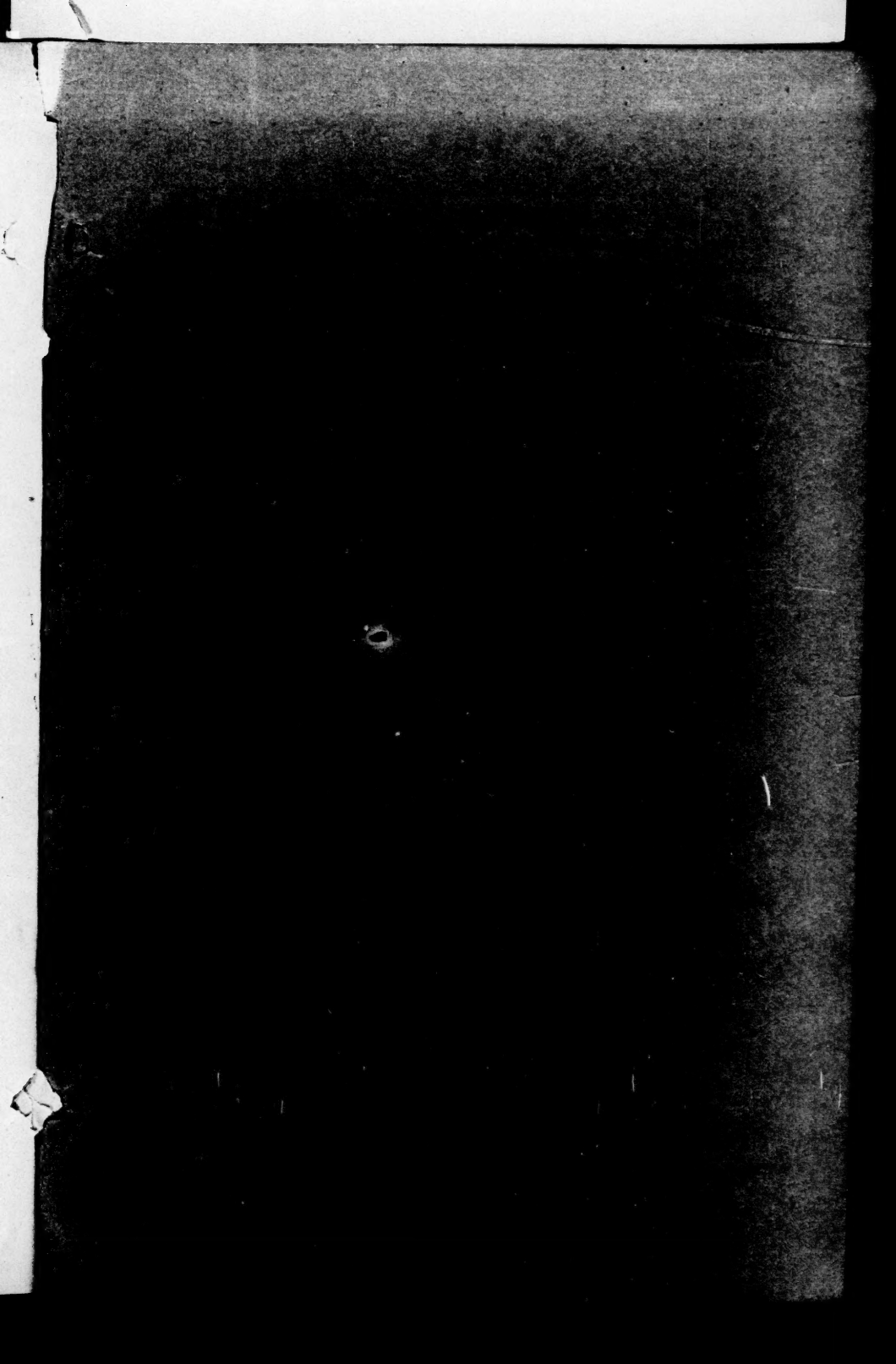
ping her engines and backing; this her pilot has pitched upon, because he thought he could not well be contradicted, as no one could tell at what distance the boats were apart when he rung the Republic's stopping bells. We think, however, that the engineer's testimony on cross-examination shows clearly that it was not done until after the collision. The Master and several other witnesses on the Cleona state positively that the wheels of the Republic were going ahead at the time of the collision, and that they saw them, and their testimony is corroborated by the effects of the blow careening the Cleona over so that water ran in her main hatch, and her anvil, freight, and persons on board of her rolled overboard, and in that position forcing her broadside on up the river. But supposing, for the sake of argument, that this stopping and backing had been done, yet the testimony is conclusive that it was not done at the proper time, and that if it had been, the collision would not and could not have occurred, and it was the duty of the Great Republic, by article 17 of the Act of 1864, to have avoided the Cleona.

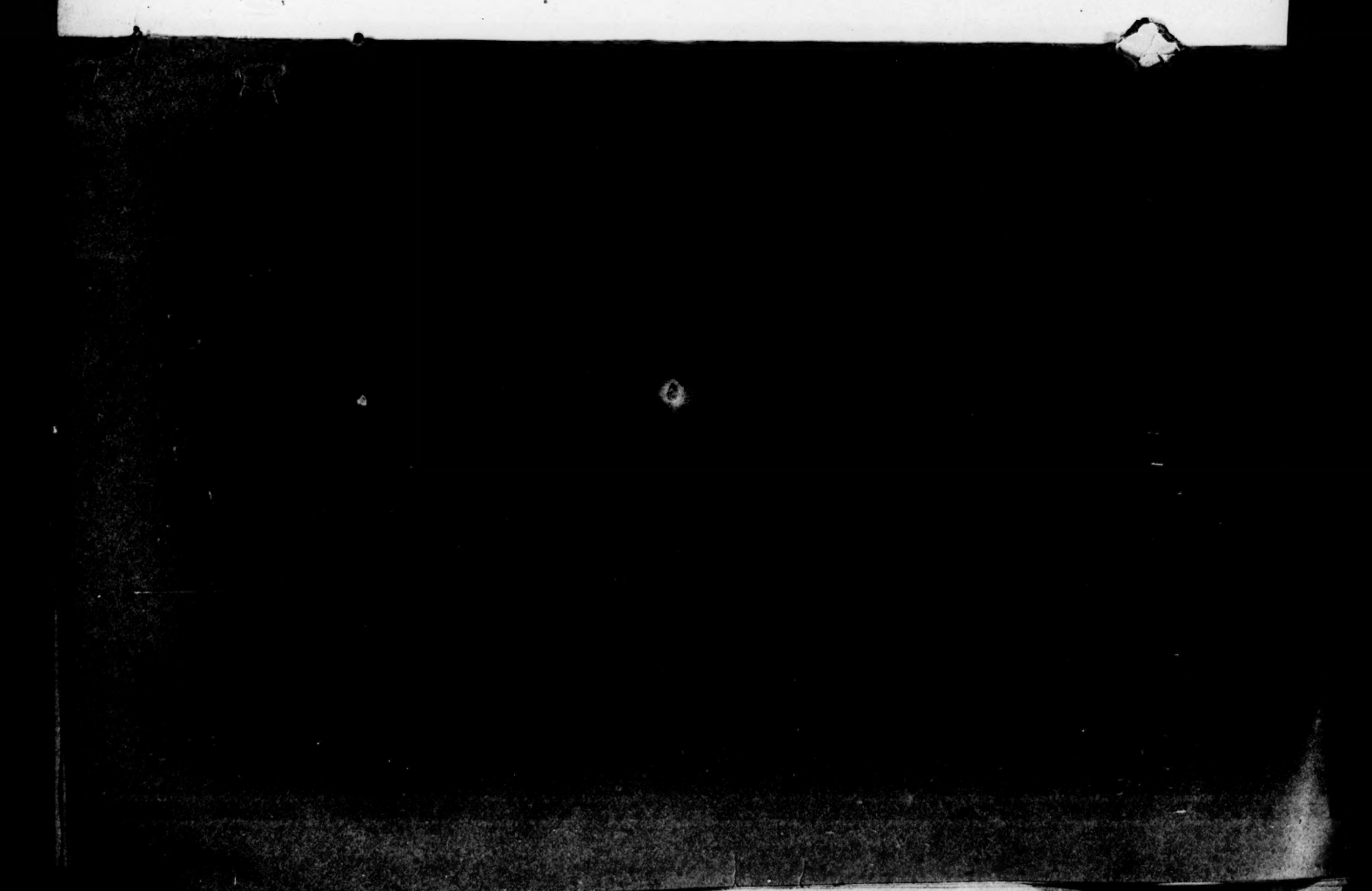
Respectfully submitted,

BENTINCK EGAN,

Proctor for Libellant.

J. H. Mulchausen
of counsel





In the Supreme Court of the United States.

October Term, 1874.

JAMES M. THOMPSON,
Appellant,
vs.
W. B. DONALDSON, *et al.*,
Appellees.

No. 78.

Brief of Appellees.

A careful perusal of the evidence, and a study of the plan of the river, the course of the respective boats, the place and circumstances of the collision, the conduct of the parties before, during, and after the collision, will, we think, result in leaving the mind free from all doubt on the merits of this case. The defence succeeded in both the district and circuit courts; and in the former tribunal, after two trials.

Both steamers were ascending the Mississippi river on the left bank, near Twelve-mile Point. The second paragraph of the libel asserts, (Record, page 1:) When the *Cleona* crossed from left bank to the bend on the right, and in oblique course against the current, and when about the middle of the river, the *Great Republic* struck her on larboard stern, carrying away, &c., &c.

The answer was: That the *Cleona*, whilst ascending the left bank, suddenly, without warning or signalling, changed

her course to crossing the river, at a wrong place, not more than 300 yards ahead of the *Great Republic, in the current.* The *Great Republic* thought she had sheered, and helmed a-starboard to give her room to straighten up; but she kept on across, to the pilot's surprise, and gave two whistles and kept on crossing. Then danger became imminent. Then the *Great Republic* helmed hard a-starboard; first, stopping bells; then, backing bells; and had begun to swing heavily to the larboard; but it was not possible to at once overcome momentum or suddenly change the course of the *Great Republic*, which, if done, would have cut the *Cleona* in two. See answer to the above allegations in libel, on Record, pages 3 and 4.

Under these allegations and the proofs, the appellants aver there was fault in the defendants:

First. In violating the right of the *Cleona* to cross the river when and where it was her pleasure so to do:

Second. In not answering the signals made by the *Cleona.*

Third. In helming a-starboard after the first signal by the *Cleona.*

Fourth. Incompetency and intemperance of the *Great Republic's* pilot, W. I. Kribben.

To which charges of fault, the owners of the *Great Republic* reply, as follows:

First. Admitting your right to cross the river when and where you please, *a. g.*, still you were in fault in exercising this right, under the circumstances; because it could not be done without the greatest peril to the *Cleona*, and her passengers, crew, and freight; and with no less danger to the far more valuable *Great Republic* and her freight,

and her much larger crew and number of passengers. *Sic utere tuo ut non lædas alienum.*

No principle of law in collision cases is better settled than that it is fault for a pilot to persist in the exercise of an undoubted right, when, by refraining from its exercise, damages can be avoided. It is the law of the road, as well as of the river and the sea.

Mayhew *vs.* Boyce, 1 Starkie Rep., 423.

This persistent act of folly on the part of the *Cleona* in crossing in front of the *Great Republic* was the beginning, continuance, and end of the disaster.

Second. Nor was it fault in us not to answer your signals. Because—

(*a.*) They were not the proper signals for a crossing boat:

(*b.*) They were ambiguous signals to the *Great Republic*, whether intended to direct us to the starboard or larboard.

(*c.*) They were in every way calculated to mislead, and they should not have been answered.

(*d.*) They were susceptible of three different interpretations; and an answer, even if responsive to the views and intentions of those on the *Cleona* would have been useless and unprofitable.

Third. The fault is not on us for not replying to your signals, but on you, because your signals were no indication of your real intention to cross; but, according to your own account, they were given for an entirely different purpose, and so hurriedly, imperfectly, and tardily, that any intelligent response to them was impracticable. And if

your alleged signalling to helm a-starboard had been carried out, the result would, in all human probability, have been far more disastrous.

And, lastly, we reply that our pilot was neither incompetent nor intemperate, as you attempt to prove; and that the weight of evidence rather shows the allegation of the answer to be true, "that the *Cleona* was in charge of "young, unskilful, rash, and imprudent pilots," * * * "and was not in a seaworthy condition," &c.

Incompetency and intemperance of the pilot, Kribben, not having been proved, it is submitted that his conduct, under the circumstances of this case, is commendable, and entirely relieves the defendants from liability.

See Chaplin *vs.* Hawes and others, 3 C. & P., 554.

The absence of the rules of the river from the record deprives the court of one of the best and most satisfactory tests of the ability and capacity of the pilot at the wheel of the *Great Republic* at the time of the occurrence.

On the whole case, see—

The *Grace Girdler*, 7 Wall., 196.

We pray your Honors simply to affirm the judgment of the district court, and thus far to correct the judgment of the circuit court, which has erroneously dismissed the suit after affirmance.

Respectfully submitted.

DURANT & HORNOR,
Atty's for Appellees.

WASHINGTON, D. C.,
May 29, 1874.